

HOUSE BILL NO. 908

INTRODUCED BY HARPER, BARDANOUVE, IVERSON, VINCENT,
KEMMIS, ASAY, FABREGA

IN THE HOUSE

March 11, 1983	Introduced and referred to Committee on Natural Resources.
March 25, 1983	Committee recommend bill do pass as amended. Report adopted. Bill printed and placed on members' desks.
March 26, 1983	Second reading, do pass as amended.
March 28, 1983	Correctly engrossed. Third reading, passed. Transmitted to Senate.

IN THE SENATE

April 5, 1983	Introduced and referred to Committee on Rules.
April 7, 1983	Committee recommend bill be concurrent in as amended. Report adopted. Motion to accept amendments from Committee on Rules and referred to proper committee.
April 8, 1983	Referred to Committee on Agriculture, Livestock and Irrigation.

April 7, 1983

Committee recommend bill
be concurred in as amended.
Report adopted.

Motion to accept amendments
from Rules and referred to
proper committee.

April 14, 1983

Committee recommend bill
be concurred in as amended.
Report adopted.

April 14, 1983

Second reading, concurred
in as amended.

April 15, 1983

Third reading, concurred in.
Ayes, 48; Noes, 0.

IN THE HOUSE

April 16, 1983

Returned to House with
amendments.

April 18, 1983

Second reading, amendments
not concurred in.

On motion Conference Committee
requested and appointed.

April 20, 1983

Conference Committee
dissolved.

On motion Free Conference
Committee requested and
appointed.

Free Conference Committee
reported.

Second reading, Free
Conference Committee report
adopted.

Third reading, Free Confer-
ence report adopted.

April 21, 1983

Free Conference Committee
report adopted by Senate.

Sent to enrolling.

Reported correctly enrolled.

1 *House* BILL NO. *908*
2 INTRODUCED BY *Rep. Baudouin*
3 *Vincent Kemmis*
4 A BILL FOR AN ACT ENTITLED: "AN ACT ADDING CERTAIN
5 PIPELINES TO THE DEFINITION OF "FACILITY" UNDER THE MONTANA
6 MAJOR FACILITY SITING ACT; PROHIBITING THE ISSUANCE OF
7 PERMITS FOR CERTAIN AMOUNTS OF WATER WITHOUT LEGISLATIVE
8 APPROVAL; PROVIDING FOR A STUDY BY A SELECT COMMITTEE OF
9 WATER MARKETING; PROVIDING AN APPROPRIATION; AMENDING
10 SECTIONS 75-20-104, 75-20-216, 75-20-218, 75-20-303,
11 75-20-304, 75-20-1202, 85-1-205, AND 85-2-311, MCA;
12 REPEALING SECTION 85-1-121, MCA; AND PROVIDING AN IMMEDIATE
13 EFFECTIVE DATE."

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16 Section 1. Section 75-20-104, MCA, is amended to read:

17 "75-20-104. Definitions. In this chapter, unless the
18 context requires otherwise, the following definitions apply:

19 (1) "Addition thereto" means the installation of new
20 machinery and equipment which would significantly change the
21 conditions under which the facility is operated.

22 (2) "Application" means an application for a
23 certificate submitted in accordance with this chapter and
24 the rules adopted hereunder.

25 (3) "Associated facilities" includes but is not

1 limited to transportation links of any kind, aqueducts,
2 diversion dams, transmission substations, storage ponds,
3 reservoirs, and any other device or equipment associated
4 with the production or delivery of the energy form or
5 product produced by a facility, except that the term does
6 not include a facility.

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

9 (5) "Board of health" means the board of health and
10 environmental sciences provided for in 2-15-2104.

11 (6) "Certificate" means the certificate of
12 environmental compatibility and public need issued by the
13 board under this chapter that is required for the
14 construction or operation of a facility.

15 (7) "Commence to construct" means:

16 (a) any clearing of land, excavation, construction, or
17 other action that would affect the environment of the site
18 or route of a facility but does not mean changes needed for
19 temporary use of sites or routes for nonutility purposes or
20 uses in securing geological data, including necessary
21 borings to ascertain foundation conditions;

22 (b) the fracturing of underground formations by any
23 means if such activity is related to the possible future
24 development of a gasification facility or a facility
25 employing geothermal resources but does not include the

1 gathering of geological data by boring of test holes or
2 other underground exploration, investigation, or
3 experimentation;

4 (c) the commencement of eminent domain proceedings
5 under Title 70, chapter 30, for land or rights-of-way upon
6 or over which a facility may be constructed;

7 (d) the relocation or upgrading of an existing
8 facility defined by (b) or (c) of subsection (10), including
9 upgrading to a design capacity covered by subsection
10 (10)(b), except that the term does not include normal
11 maintenance or repair of an existing facility.

12 (8) "Department" means the department of natural
13 resources and conservation provided for in Title 2, chapter
14 15, part 33.

15 (9) "Department of health" means the department of
16 health and environmental sciences provided for in Title 2,
17 chapter 15, part 21.

18 (10) "Facility" means:

19 (a) except for crude oil and natural gas refineries,
20 and facilities and associated facilities designed for or
21 capable of producing, gathering, processing, transmitting,
22 transporting, or distributing crude oil or natural gas, and
23 those facilities subject to The Montana Strip and
24 Underground Mine Reclamation Act, each plant, unit, or other
25 facility and associated facilities designed for or capable

1 of:

2 (i) generating 50 megawatts of electricity or more or
3 any addition thereto (except pollution control facilities
4 approved by the department of health and environmental
5 sciences added to an existing plant) having an estimated
6 cost in excess of \$10 million;

7 (ii) producing 25 million cubic feet or more of gas
8 derived from coal per day or any addition thereto having an
9 estimated cost in excess of \$10 million;

10 (iii) producing 25,000 barrels of liquid hydrocarbon
11 products per day or more or any addition thereto having an
12 estimated cost in excess of \$10 million;

13 (iv) enriching uranium minerals or any addition thereto
14 having an estimated cost in excess of \$10 million; or

15 (v) utilizing or converting 500,000 tons of coal per
16 year or more or any addition thereto having an estimated
17 cost in excess of \$10 million;

18 (b) each electric transmission line and associated
19 facilities of a design capacity of more than 69 kilovolts,
20 except that the term does not include an electric
21 transmission line and associated facilities of a design
22 capacity of 230 kilovolts or less and 10 miles or less in
23 length;

24 (c) each pipeline and associated facilities designed
25 for or capable of transporting gas (except for natural gas);

1 ~~waters~~ or liquid hydrocarbon products from or to a facility
 2 located within or without this state of the size indicated
 3 in subsection (10)(a) of this section;

4 ~~(d) each pipeline greater than 20 inches in diameter~~
 5 ~~or 30 miles in length and associated facilities designed for~~
 6 ~~or capable of transporting water or using water as a~~
 7 ~~transport medium;~~

8 ~~(e)(a)~~ any use of geothermal resources, including the
 9 use of underground space in existence or to be created, for
 10 the creation, use, or conversion of energy, designed for or
 11 capable of producing geothermally derived power equivalent
 12 to 25 million Btu per hour or more or any addition thereto
 13 having an estimated cost in excess of \$750,000;

14 ~~(e)(f)~~ any underground in situ gasification of coal.
 15 (11) "Person" means any individual, group, firm,
 16 partnership, corporation, cooperative, association,
 17 government subdivision, government agency, local government,
 18 or other organization or entity.

19 (12) "Transmission substation" means any structure,
 20 device, or equipment assemblage, commonly located and
 21 designed for voltage regulation, circuit protection, or
 22 switching necessary for the construction or operation of a
 23 proposed transmission line.

24 (13) "Utility" means any person engaged in any aspect
 25 of the production, storage, sale, delivery, or furnishing of

1 heat, electricity, gas, hydrocarbon products, or energy in
 2 any form for ultimate public use."

3 Section 2. Section 75-20-216, MCA, is amended to read:

4 "75-20-216. Study, evaluation, and report on proposed
 5 facility -- assistance by other agencies. (1) After receipt
 6 of an application, the department and department of health
 7 shall within 90 days notify the applicant in writing that:

8 (a) the application is in compliance and is accepted
 9 as complete; or

10 (b) the application is not in compliance and list the
 11 deficiencies therein; and upon correction of these
 12 deficiencies and resubmission by the applicant, the
 13 department and department of health shall within 30 days
 14 notify the applicant in writing that the application is in
 15 compliance and is accepted as complete.

16 (2) Upon receipt of an application complying with
 17 75-20-211 through 75-20-215, and this section, the
 18 department shall commence an intensive study and evaluation
 19 of the proposed facility and its effects, considering all
 20 applicable criteria listed in 75-20-301 and 75-20-503 and
 21 the department of health shall commence a study to enable it
 22 or the board of health to issue a decision, opinion, order,
 23 certification, or permit as provided in subsection (3). The
 24 department and department of health shall use, to the extent
 25 they consider applicable, valid and useful existing studies

and reports submitted by the applicant or compiled by a state or federal agency.

(3) The department of health shall within 1 year following the date of acceptance of an application and the board of health or department of health, if applicable, within an additional 6 months issue any decision, opinion, order, certification, or permit required under the laws administered by the department of health or the board of health and this chapter. The department of health and the board of health shall determine compliance with all standards, permit requirements, and implementation plans under their jurisdiction for the primary and reasonable alternate locations in their decision, opinion, order, certification, or permit. The decision, opinion, order, certification, or permit, with or without conditions, is conclusive on all matters that the department of health and board of health administer, and any of the criteria specified in subsections (2) through (7) of 75-20-503 that are a part of the determinations made under the laws administered by the department of health and the board of health. Although the decision, opinion, order, certification, or permit issued under this subsection is conclusive, the board retains authority to make the determination required under 75-20-301(2)(c). The decision, opinion, order, certification, or permit of the department

of health or the board of health satisfies the review requirements by those agencies and shall be acceptable in lieu of an environmental impact statement under the Montana Environmental Policy Act. A copy of the decision, opinion, order, certification, or permit shall be served upon the department and the board and shall be utilized as part of their final site selection process. Prior to the issuance of a preliminary decision by the department of health and pursuant to rules adopted by the board of health, the department of health shall provide an opportunity for public review and comment.

(4) Within 22 months following acceptance of an application for a facility as defined in (a) and ~~(d)~~ (a) of 75-20-104(10) and for a facility as defined in (b) and ~~(e)~~ through (d) of 75-20-104(10) which is more than 30 miles in length and within 1 year for a facility as defined in (b) and ~~(e)~~ through (d) of 75-20-104(10) which is 30 miles or less in length, the department shall make a report to the board which shall contain the department's studies, evaluations, recommendations, other pertinent documents resulting from its study and evaluation, and an environmental impact statement or analysis prepared pursuant to the Montana Environmental Policy Act, if any. If the application is for a combination of two or more facilities, the department shall make its report to the board within the

1 greater of the lengths of time provided for in this
2 subsection for either of the facilities.

3 (5) The departments of highways; commerce; fish,
4 wildlife, and parks; state lands; revenue; and public
5 service regulation shall report to the department
6 information relating to the impact of the proposed site on
7 each department's area of expertise. The report may include
8 opinions as to the advisability of granting, denying, or
9 modifying the certificate. The department shall allocate
10 funds obtained from filing fees to the departments making
11 reports to reimburse them for the costs of compiling
12 information and issuing the required report.*

13 Section 3. Section 75-20-218, MCA, is amended to read:

14 "75-20-218. Hearing date -- location -- department to
15 act as staff -- hearings to be held jointly. (1) Upon
16 receipt of the department's report submitted under
17 75-20-216, the board shall set a date for a hearing to begin
18 not more than 120 days after the receipt. ~~Except for these~~
19 ~~hearings-involving-applications-submitted-for-facilities-as~~
20 ~~defined-in--(b)--and--(c)--of--75-20-104(18),v-certification~~
21 ~~Certification~~ hearings shall be conducted by the board in
22 the county seat of Lewis and Clark County or the county in
23 which the facility or the greater portion thereof is to be
24 located.

25 (2) Except as provided in 75-20-221(2), the department

1 shall act as the staff for the board throughout the
2 decisionmaking process and the board may request the
3 department to present testimony or cross-examine witnesses
4 as the board considers necessary and appropriate.

5 (3) At the request of the applicant, the department of
6 health and the board of health shall hold any required
7 permit hearings required under laws administered by those
8 agencies in conjunction with the board certification
9 hearing. In such a conjunctive hearing the time periods
10 established for reviewing an application and for issuing a
11 decision on certification of a proposed facility under this
12 chapter supersede the time periods specified in other laws
13 administered by the department of health and the board of
14 health.*

15 Section 4. Section 75-20-303, MCA, is amended to read:

16 "75-20-303. Opinion issued with decision -- contents.
17 (1) In rendering a decision on an application for a
18 certificate, the board shall issue an opinion stating its
19 reasons for the action taken.

20 (2) If the board has found that any regional or local
21 law or regulation which would be otherwise applicable is
22 unreasonably restrictive pursuant to 75-20-301(2)(f), it
23 shall state in its opinion the reasons therefor.

24 (3) Any certificate issued by the board shall include
25 the following:

1 (a) an environmental evaluation statement related to
 2 the facility being certified. The statement shall include
 3 but not be limited to analysis of the following information:
 4 (i) the environmental impact of the proposed facility;
 5 (ii) any adverse environmental effects which cannot be
 6 avoided by issuance of the certificate;
 7 (iii) problems and objections raised by other federal
 8 and state agencies and interested groups;
 9 (iv) alternatives to the proposed facility;
 10 (v) a plan for monitoring environmental effects of the
 11 proposed facility; and
 12 (vi) a time limit as provided in subsection (4), during
 13 which construction of the facility must be completed;
 14 (b) a statement signed by the applicant showing
 15 agreement to comply with the requirements of this chapter
 16 and the conditions of the certificate.
 17 (4) The board shall issue as part of the certificate
 18 the following time limits during which construction of a
 19 facility must be completed:
 20 (a) For a facility as defined in (b)₁, (c)₁ or (e) (d)₁
 21 of 75-20-104~~(7)~~(10) that is more than 30 miles in length,
 22 the time limit is 10 years.
 23 (b) For a facility as defined in (b)₁, (c)₁ or (e) (d)₁
 24 of 75-20-104~~(7)~~(10) that is 30 miles or less in length, the
 25 time limit is 5 years.

1 (c) The time limit shall be extended for periods of 2
 2 years each upon a showing by the applicant to the board that
 3 a good faith effort is being undertaken to complete
 4 construction. Under this subsection, a good faith effort to
 5 complete construction includes the process of acquiring any
 6 necessary state or federal permit or certificate for the
 7 facility and the process of judicial review of any such
 8 permit or certificate.
 9 (5) The provisions of subsection (4) apply to any
 10 facility for which a certificate has not been issued or for
 11 which construction is yet to be commenced."
 12 Section 5. Section 75-20-304, MCA, is amended to read:
 13 "75-20-304. Waiver of provisions of certification
 14 proceedings. (1) The board may waive compliance with any of
 15 the provisions of 75-20-216 through 75-20-222, 75-20-501,
 16 and this part if the applicant makes a clear and convincing
 17 showing to the board at a public hearing that an immediate,
 18 urgent need for a facility exists and that the applicant did
 19 not have knowledge that the need for the facility existed
 20 sufficiently in advance to fully comply with the provisions
 21 of 75-20-216 through 75-20-222, 75-20-501, and this part.
 22 (2) The board may waive compliance with any of the
 23 provisions of this chapter upon receipt of notice by a
 24 utility or person subject to this chapter that a facility or
 25 associated facility has been damaged or destroyed as a

1 result of fire, flood, or other natural disaster or as the
2 result of insurrection, war, or other civil disorder and
3 there exists an immediate need for construction of a new
4 facility or associated facility or the relocation of a
5 previously existing facility or associated facility in order
6 to promote the public welfare.

7 (3) The board shall waive compliance with the
8 requirements of subsections (2)(c), (3)(b), and (3)(c) of
9 75-20-301 and 75-20-501(5) and the requirements of
10 subsections (1)(a)(iv) and (v) of 75-20-211, 75-20-216(3),
11 and 75-20-303(3)(a)(iv) relating to consideration of
12 alternative sites if the applicant makes a clear and
13 convincing showing to the board at a public hearing that:

14 (a) a proposed facility will be constructed in a
15 county where a single employer within the county has
16 permanently curtailed or ceased operations causing a loss of
17 250 or more permanent jobs within 2 years at the employer's
18 operations within the preceding 10-year period;

19 (b) the county and municipal governing bodies in whose
20 jurisdiction the facility is proposed to be located support
21 by resolution such a waiver;

22 (c) the proposed facility will be constructed within a
23 15-mile radius of the operations that have ceased or been
24 curtailed; and

25 (d) the proposed facility will have a beneficial

1 effect on the economy of the county in which the facility is
2 proposed to be located.

3 (4) The waiver provided for in subsection (3) applies
4 only to permanent job losses by a single employer. The
5 waiver provided for in subsection (3) does not apply to jobs
6 of a temporary or seasonal nature, including but not limited
7 to construction jobs or job losses during labor disputes.

8 (5) The waiver provided for in subsection (3) does not
9 apply to consideration of alternatives or minimum adverse
10 environmental impact for a facility defined in subsections
11 (10)(b), (c), (d), ~~(e)~~ or ~~(f)~~ of 75-20-104, for an
12 associated facility defined in subsection (3) of 75-20-104,
13 or for any portion of or process in a facility defined in
14 subsection (10)(a) of 75-20-104 to the extent that the
15 process or portion of the facility is not subject to a
16 permit issued by the department of health or board of
17 health.

18 (6) The applicant shall pay all expenses required to
19 process and conduct a hearing on a waiver request under
20 subsection (3). However, any payments made under this
21 subsection shall be credited toward the fee paid under
22 75-20-215 to the extent the data or evidence presented at
23 the hearing or the decision of the board under subsection
24 (3) can be used in making a certification decision under
25 this chapter.

1 (7) The board may grant only one waiver under
2 subsections (3) and (4) for each permanent loss of jobs as
3 defined in subsection (3)(a)."

4 Section 6. Section 75-20-1202, MCA, is amended to
5 read:

6 "75-20-1202. Definitions. As used in this part and
7 75-20-201 through 75-20-203, the following definitions
8 apply:

9 (1) (a) "Nuclear facility" means each plant, unit, or
10 other facility designed for, or capable of,

11 (i) generating 50 megawatts of electricity or more by
12 means of nuclear fission,

13 (ii) converting, enriching, fabricating, or
14 reprocessing uranium minerals or nuclear fuels, or

15 (iii) storing or disposing of radioactive wastes or
16 materials from a nuclear facility;

17 (b) "nuclear facility" does not include any
18 small-scale facility used solely for educational, research,
19 or medical purposes not connected with the commercial
20 generation of energy.

21 (2) "Facility," as defined in 75-20-104~~(7)~~(10) is
22 further defined to include any nuclear facility as defined
23 in subsection (1)(a) of this section."

24 Section 7. Section 85-1-205, MCA, is amended to read:

25 "85-1-205. Acquisition of water in Fort-Peek-Reservoir

1 ~~federal reservoirs.~~ The department may acquire water by
2 purchase option or agreement with the federal government
3 from the--Fort-Peek-Reservoir any federal reservoir for the
4 purpose of sale, rent, or distribution for industrial use.
5 In such cases, the department is not required to construct
6 any diversion or appropriation facilities or works, and it
7 may sell, rent, or distribute such water at such rates and
8 under such terms and conditions ~~as it considers appropriate~~
9 as are established under the provisions of 85-2-311."

10 Section 8. Section 85-2-311, MCA, is amended to read:

11 "85-2-311. Criteria for issuance of permit. ~~The (1)~~
12 Except as provided in subsections (2) and (3), the
13 department shall issue a permit if the applicant proves by
14 substantial credible evidence that the following criteria
15 are met:

16 ~~(1)(a)~~ there are unappropriated waters in the source
17 of supply;

18 ~~(1)(b)~~ at times when the water can be put to the use
19 proposed by the applicant;

20 ~~(1)(c)~~ in the amount the applicant seeks to
21 appropriate; and

22 ~~(1)(d)~~ throughout the period during which the
23 applicant seeks to appropriate, the amount requested is
24 available;

25 ~~(2)(b)~~ the rights of a prior appropriator will not be

1 adversely affected;

2 ~~{3}{1c}~~ the proposed means of diversion, construction,

3 and operation of the appropriation works are adequate;

4 ~~{4}{1d}~~ the proposed use of water is a beneficial use;

5 ~~{5}{1e}~~ the proposed use will not interfere

6 unreasonably with other planned uses or developments for

7 which a permit has been issued or for which water has been

8 reserved;

9 ~~{6}--an--applicant--for--an--appropriation--of--10,000~~

10 ~~acre-feet-a-year-or-more-and-15-cubic--feet--per--second--or~~

11 ~~more-proves-by-clear-and-convincing-evidence-that-the-rights~~

12 ~~of-a-prior-appropriator-will-not-be-adversely-affected;~~

13 ~~{7}--except--as--provided--in--subsection--{6}v--the~~

14 ~~applicant--proves--by--substantial--credible--evidence--the~~

15 ~~criteria-listed-in-subsections-{1}-through-{5}.~~

16 ~~{21}--(a) The department may not issue a permit for an~~

17 ~~appropriation of 5,000 or more acre-feet of water a year or~~

18 ~~7 or more cubic feet per second of water unless:~~

19 ~~{1} the department makes an affirmative finding that:~~

20 ~~{A1} the criteria in subsection {1} are met;~~

21 ~~{B1} the applicant has proven by clear and convincing~~

22 ~~evidence that the rights of a prior appropriator will not be~~

23 ~~adversely affected; and~~

24 ~~{C1} the proposed appropriation is in the public~~

25 ~~interest; and~~

1 ~~{11} the legislature affirms the findings pursuant to~~

2 ~~subsection {21}(c).~~

3 ~~{b} In making such a finding, the department shall~~

4 ~~consider:~~

5 ~~{i} existing demands on the state water supply, as~~

6 ~~well as projected demands such as reservations of water for~~

7 ~~future beneficial purposes, including municipal water~~

8 ~~supplies, irrigation systems, and minimum streamflows for~~

9 ~~the protection of existing water rights and aquatic life;~~

10 ~~{iii} the benefits to the applicant and the state;~~

11 ~~{iiil} the economic feasibility of the project;~~

12 ~~{iv} the effects on the quantity, quality, and~~

13 ~~potability of water of existing beneficial uses in the~~

14 ~~source of supply;~~

15 ~~{v} the effects on private property rights by any~~

16 ~~creation of or contribution to saline seep; and~~

17 ~~{vi} the probable significant adverse environmental~~

18 ~~impacts of the proposed use of water as determined by the~~

19 ~~department pursuant to Title 75, chapter 1, or Title 75,~~

20 ~~chapter 20.~~

21 ~~{c1} A permit for an appropriation of 5,000 or more~~

22 ~~acre-feet of water a year or 7 or more cubic feet per second~~

23 ~~of water under subsection {21} may not be issued unless the~~

24 ~~department petitions the legislature and the legislature~~

25 ~~affirms the findings of the department.~~

1 ~~(1) An appropriation, diversion, impoundment,~~
 2 ~~restraint, or attempted appropriation, diversion,~~
 3 ~~impoundment, or restraint contrary to the provisions of this~~
 4 ~~section is null and void. No officer, agent, agency, or~~
 5 ~~employee of the state may knowingly permit, aid, or assist~~
 6 ~~in any manner such unauthorized appropriation, diversion,~~
 7 ~~impoundment, or other restraint. No person or corporation~~
 8 ~~may, directly or indirectly, personally or through an agent,~~
 9 ~~officer, or employee, attempt to appropriate, divert,~~
 10 ~~impound, or otherwise restrain or control any of the waters~~
 11 ~~within the boundaries of this state except in accordance~~
 12 ~~with this section."~~

13 NEW SECTION. Section 9. Repealer. Section 85-1-121,
 14 MCA, is repealed.

15 NEW SECTION. Section 10. Study of water marketing.
 16 (1) There is a select committee on water marketing. The
 17 select committee consists of eight members. The senate
 18 committee on committees and the speaker of the house of
 19 representatives shall each appoint four members on a
 20 bipartisan basis. The select committee shall meet as often
 21 as necessary to complete the study of water marketing
 22 required under this section.

23 (2) The select committee on water marketing shall
 24 undertake a study of the economic, tax, administrative,
 25 legal, social, and environmental advantages and

1 disadvantages of water marketing.

2 (3) The select committee shall study the desirability
 3 and feasibility of in-state and out-of-state marketing of
 4 limited amounts of water for industrial purposes from
 5 existing state and federal reservoirs and from proposed
 6 reservoirs with water reservations.

7 (4) The study must include:

8 (a) the present and future in-state demands for water
 9 for domestic, municipal, agricultural, industrial,
 10 recreational, in-stream flows, and other beneficial uses;

11 (b) how best to encourage a negotiated resolution of
 12 the conflicting demands of water users within the Missouri
 13 River basin and to discourage litigation and congressional
 14 action initiated by lower basin states;

15 (c) the potential effects of a coal slurry pipeline on
 16 coal production and the economic and environmental effects
 17 of increased coal production;

18 (d) the effects of a coal slurry pipeline on the
 19 railroad industry and rail rates for noncoal shippers;

20 (e) alternative structures for a water marketing
 21 program;

22 (f) alternative uses of revenue derived from water
 23 marketing; and

24 (g) the potential ecological effects of the
 25 installation and operation of coal slurry pipelines.

1 (5) The select committee shall solicit the advice of
2 the department of natural resources and conservation,
3 various interested industries, conservation groups,
4 appropriate state and federal agencies, and the public in
5 carrying out its duties under this section.

6 (6) The environmental quality council shall provide
7 staff assistance to the select committee. The select
8 committee may contract with experts and consultants, in
9 addition to assistance from the environmental quality
10 council staff, in carrying out its duties under this
11 section.

12 (7) The select committee shall report its findings and
13 recommendations for legislation, if any, to the 49th
14 legislature.

15 **NEW_SECTION.** Section 11. Appropriation. There is
16 appropriated from the renewable resource development
17 clearance fund account to the environmental quality council
18 for the biennium ending June 30, 1985, \$80,000 for the study
19 of water marketing by the select committee on water
20 marketing required by section 10.

21 **NEW_SECTION.** Section 12. Severability. If a part of
22 this act is invalid, all valid parts that are severable from
23 the invalid part remain in effect. If a part of this act is
24 invalid in one or more of its applications, the part remains
25 in effect in all valid applications that are severable from

1 the invalid applications.

2 **NEW_SECTION.** Section 13. Effective date. This act is
3 effective on passage and approval.

-End-

FISCAL NOTE

Form BD-15

In compliance with a written request received March 14, 19 83, there is hereby submitted a Fiscal Note for House Bill 908 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

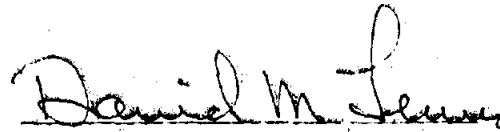
Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 908 places pipelines of greater than 20 inches in diameter or 30 miles in length, along with their associated facilities, designed for or capable of water transportation, under the provisions of the Major Facility Siting Act. It also provides that the Department of Natural Resources and Conservation may not issue a permit for and appropriation of 5,000 or more acre-feet of water a year or 7 or more cubic feet per second, without first making certain determinations required by the bill then petitioning the legislature for affirmation of the department's findings.

ASSUMPTIONS:

- 1) Fifty applications under Montana Water Law per year of 7 cubic feet per second or 5,000 acre-feet per year or more.
- 2) Only 10 percent of these applications would qualify for the EIS fee under Montana Water Law to cover department costs; the other 90 percent must be covered by additional appropriation from the general fund.
- 3) Average cost per application, \$3,180.
- 4) Review of approximately 15 applications under Montana Water Law would be contracted out at \$3,000 each.
- 5) Applications under the Major Facility Siting Act would generate revenues from EIS fees which would offset any increase in expenditures, resulting in a net effect of zero. It is not possible to estimate how many applications would be received or the total revenues and expenditures that would be generated for pipeline projects under the siting act provisions.

Continued

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 3-18-83

FISCAL IMPACT:

	<u>FY84</u>	<u>FY85</u>
Revenue		
Fees	\$ 16,000	\$ 16,000
Expenditures		
Personal Services	68,400	68,400
Operating Expenses	57,500	57,500
Equipment	3,000	-0-
Total	<u>\$128,900</u>	<u>\$125,900</u>
Net Effect	<u>(112,900)</u>	<u>(109,900)</u>
(Revenue Less Expenditures)		

LONG-RANGE EFFECTS:

A significant increase or decrease in the number of applications, from the estimate of 50 annually, would cause a proportionate increase or decrease in costs of this program.

COMMENT:

There is appropriated \$80,000 to the Environmental Quality Council from the renewable resource development clearance fund account for the study of water marketing.

FISCAL NOTE 17:N/2

Approved by Committee
on Natural Resources

HOUSE BILL NO. 908

INTRODUCED BY HARPER, BARDANOUVE, IVERSON,

VINCENT, KEMMIS, ASAY, FABREGA

A BILL FOR AN ACT ENTITLED: "AN ACT ADDING CERTAIN PIPELINES TO THE DEFINITION OF "FACILITY" UNDER THE MONTANA MAJOR FACILITY SITING ACT; PROHIBITING THE ISSUANCE OF PERMITS FOR CERTAIN AMOUNTS OF WATER WITHOUT LEGISLATIVE APPROVAL; PROVIDING FOR A STUDY BY A SELECT COMMITTEE OF WATER MARKETING; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 75-20-104, 75-20-216, 75-20-218, 75-20-303, 75-20-304, 75-20-1202, 85-1-205, AND 85-2-311, MCA; REPEALING SECTION 85-1-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 75-20-104, MCA, is amended to read:
"75-20-104. Definitions. In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Addition thereto" means the installation of new machinery and equipment which would significantly change the conditions under which the facility is operated.

(2) "Application" means an application for a certificate submitted in accordance with this chapter and the rules adopted hereunder.

(3) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion dams, transmission substations, storage ponds, reservoirs, and any other device or equipment associated with the production or delivery of the energy form or product produced by a facility, except that the term does not include a facility.

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

(5) "Board of health" means the board of health and environmental sciences provided for in 2-15-2104.

(6) "Certificate" means the certificate of environmental compatibility and public need issued by the board under this chapter that is required for the construction or operation of a facility.

(7) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

(b) the fracturing of underground formations by any means if such activity is related to the possible future development of a gasification facility or a facility

employing geothermal resources but does not include the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation;

(c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or rights-of-way upon or over which a facility may be constructed;

(d) the relocation or upgrading of an existing facility defined by (b) or (c) of subsection (10), including upgrading to a design capacity covered by subsection (10)(b), except that the term does not include normal maintenance or repair of an existing facility.

(8) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(9) "Department of health" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(10) "Facility" means:

(a) except for crude oil and natural gas refineries, and facilities and associated facilities designed for or capable of producing, gathering, processing, transmitting, transporting, or distributing crude oil or natural gas, and those facilities subject to The Montana Strip and Underground Mine Reclamation Act, each plant, unit, or other

facility and associated facilities designed for or capable of:

(i) generating 50 megawatts of electricity or more or any addition thereto (except pollution control facilities approved by the department of health and environmental sciences added to an existing plant) having an estimated cost in excess of \$10 million;

(ii) producing 25 million cubic feet or more of gas derived from coal per day or any addition thereto having an estimated cost in excess of \$10 million;

(iii) producing 25,000 barrels of liquid hydrocarbon products per day or more or any addition thereto having an estimated cost in excess of \$10 million;

(iv) enriching uranium minerals or any addition thereto having an estimated cost in excess of \$10 million; or

(v) utilizing or converting 500,000 tons of coal per year or more or any addition thereto having an estimated cost in excess of \$10 million;

(b) each electric transmission line and associated facilities of a design capacity of more than 69 kilovolts, except that the term does not include an electric transmission line and associated facilities of a design capacity of 230 kilovolts or less and 10 miles or less in length;

(c) each pipeline and associated facilities designed

1 for or capable of transporting gas (except for natural gas),
 2 water, or liquid hydrocarbon products from or to a facility
 3 located within or without this state of the size indicated
 4 in subsection (10)(a) of this section;

5 ~~(d) each pipeline greater than 20 inches in diameter~~
 6 ~~or AND 30 miles in length and associated facilities designed~~
 7 ~~for or capable of transporting water or using water as a~~
 8 ~~transport medium;~~

9 ~~(d)(e)~~ any use of geothermal resources, including the
 10 use of underground space in existence or to be created, for
 11 the creation, use, or conversion of energy, designed for or
 12 capable of producing geothermally derived power equivalent
 13 to 25 million Btu per hour or more or any addition thereto
 14 having an estimated cost in excess of \$750,000;

15 ~~(e)(f)~~ any underground in situ gasification of coal.

16 (11) "Person" means any individual, group, firm,
 17 partnership, corporation, cooperative, association,
 18 government subdivision, government agency, local government,
 19 or other organization or entity.

20 (12) "Transmission substation" means any structure,
 21 device, or equipment assemblage, commonly located and
 22 designed for voltage regulation, circuit protection, or
 23 switching necessary for the construction or operation of a
 24 proposed transmission line.

25 (13) "Utility" means any person engaged in any aspect

1 of the production, storage, sale, delivery, or furnishing of
 2 heat, electricity, gas, hydrocarbon products, or energy in
 3 any form for ultimate public use."

4 Section 2. Section 75-20-216, MCA, is amended to read:

5 "75-20-216. Study, evaluation, and report on proposed
 6 facility -- assistance by other agencies. (1) After receipt
 7 of an application, the department and department of health
 8 shall within 90 days notify the applicant in writing that:

9 (a) the application is in compliance and is accepted
 10 as complete; or

11 (b) the application is not in compliance and list the
 12 deficiencies therein; and upon correction of these
 13 deficiencies and resubmission by the applicant, the
 14 department and department of health shall within 30 days
 15 notify the applicant in writing that the application is in
 16 compliance and is accepted as complete.

17 (2) Upon receipt of an application complying with
 18 75-20-211 through 75-20-215, and this section, the
 19 department shall commence an intensive study and evaluation
 20 of the proposed facility and its effects, considering all
 21 applicable criteria listed in 75-20-301 and 75-20-503 and
 22 the department of health shall commence a study to enable it
 23 or the board of health to issue a decision, opinion, order,
 24 certification, or permit as provided in subsection (3). The
 25 department and department of health shall use, to the extent

1 they consider applicable, valid and useful existing studies
2 and reports submitted by the applicant or compiled by a
3 state or federal agency.

4 (3) The department of health shall within 1 year
5 following the date of acceptance of an application and the
6 board of health or department of health, if applicable,
7 within an additional 6 months issue any decision, opinion,
8 order, certification, or permit required under the laws
9 administered by the department of health or the board of
10 health and this chapter. The department of health and the
11 board of health shall determine compliance with all
12 standards, permit requirements, and implementation plans
13 under their jurisdiction for the primary and reasonable
14 alternate locations in their decision, opinion, order,
15 certification, or permit. The decision, opinion, order,
16 certification, or permit, with or without conditions, is
17 conclusive on all matters that the department of health and
18 board of health administer, and any of the criteria
19 specified in subsections (2) through (7) of 75-20-503 that
20 are a part of the determinations made under the laws
21 administered by the department of health and the board of
22 health. Although the decision, opinion, order,
23 certification, or permit issued under this subsection is
24 conclusive, the board retains authority to make the
25 determination required under 75-20-301(2)(c). The decision,

1 opinion, order, certification, or permit of the department
2 of health or the board of health satisfies the review
3 requirements by those agencies and shall be acceptable in
4 lieu of an environmental impact statement under the Montana
5 Environmental Policy Act. A copy of the decision, opinion,
6 order, certification, or permit shall be served upon the
7 department and the board and shall be utilized as part of
8 their final site selection process. Prior to the issuance of
9 a preliminary decision by the department of health and
10 pursuant to rules adopted by the board of health, the
11 department of health shall provide an opportunity for public
12 review and comment.

13 (4) Within 22 months following acceptance of an
14 application for a facility as defined in (a) and ~~(d)~~ (e) of
15 75-20-104(10) and for a facility as defined in (b) ~~and (e)~~
16 ~~through (d)~~ of 75-20-104(10) which is more than 30 miles in
17 length and within 1 year for a facility as defined in (b)
18 ~~and (e)~~ ~~through (d)~~ of 75-20-104(10) which is 30 miles or
19 less in length, the department shall make a report to the
20 board which shall contain the department's studies,
21 evaluations, recommendations, other pertinent documents
22 resulting from its study and evaluation, and an
23 environmental impact statement or analysis prepared pursuant
24 to the Montana Environmental Policy Act, if any. If the
25 application is for a combination of two or more facilities,

1 the department shall make its report to the board within the
2 greater of the lengths of time provided for in this
3 subsection for either of the facilities.

4 (5) The departments of highways; commerce; fish,
5 wildlife, and parks; state lands; revenue; and public
6 service regulation shall report to the department
7 information relating to the impact of the proposed site on
8 each department's area of expertise. The report may include
9 opinions as to the advisability of granting, denying, or
10 modifying the certificate. The department shall allocate
11 funds obtained from filing fees to the departments making
12 reports to reimburse them for the costs of compiling
13 information and issuing the required report."

14 Section 3. Section 75-20-218, MCA, is amended to read:

15 "75-20-218. Hearing date -- location -- department to
16 act as staff -- hearings to be held jointly. (1) Upon
17 receipt of the department's report submitted under
18 75-20-216, the board shall set a date for a hearing to begin
19 not more than 120 days after the receipt. ~~Except for those~~
20 ~~hearings involving applications submitted for facilities as~~
21 ~~defined in (b) and (c) of 75-20-104(10), certification~~
22 Certification hearings shall be conducted by the board in
23 the county seat of Lewis and Clark County or the county in
24 which the facility or the greater portion thereof is to be
25 located.

1 (2) Except as provided in 75-20-221(2), the department
2 shall act as the staff for the board throughout the
3 decisionmaking process and the board may request the
4 department to present testimony or cross-examine witnesses
5 as the board considers necessary and appropriate.

6 (3) At the request of the applicant, the department of
7 health and the board of health shall hold any required
8 permit hearings required under laws administered by those
9 agencies in conjunction with the board certification
10 hearing. In such a conjunctive hearing the time periods
11 established for reviewing an application and for issuing a
12 decision on certification of a proposed facility under this
13 chapter supersede the time periods specified in other laws
14 administered by the department of health and the board of
15 health."

16 Section 4. Section 75-20-303, MCA, is amended to read:

17 "75-20-303. Opinion issued with decision -- contents.

18 (1) In rendering a decision on an application for a
19 certificate, the board shall issue an opinion stating its
20 reasons for the action taken.

21 (2) If the board has found that any regional or local
22 law or regulation which would be otherwise applicable is
23 unreasonably restrictive pursuant to 75-20-301(2)(f), it
24 shall state in its opinion the reasons therefor.

25 (3) Any certificate issued by the board shall include

the following:

(a) an environmental evaluation statement related to the facility being certified. The statement shall include but not be limited to analysis of the following information:

(i) the environmental impact of the proposed facility;

(ii) any adverse environmental effects which cannot be avoided by issuance of the certificate;

(iii) problems and objections raised by other federal and state agencies and interested groups;

(iv) alternatives to the proposed facility;

(v) a plan for monitoring environmental effects of the proposed facility; and

(vi) a time limit as provided in subsection (4), during which construction of the facility must be completed;

(b) a statement signed by the applicant showing agreement to comply with the requirements of this chapter and the conditions of the certificate.

(4) The board shall issue as part of the certificate the following time limits during which construction of a facility must be completed:

(a) For a facility as defined in (b) ~~1(c)1~~ or (c) ~~1d~~ of 75-20-104~~(7)~~~~110~~ that is more than 30 miles in length, the time limit is 10 years.

(b) For a facility as defined in (b) ~~1(c)1~~ or (c) ~~1d~~ of 75-20-104~~(7)~~~~110~~ that is 30 miles or less in length, the

time limit is 5 years.

(c) The time limit shall be extended for periods of 2 years each upon a showing by the applicant to the board that a good faith effort is being undertaken to complete construction. Under this subsection, a good faith effort to complete construction includes the process of acquiring any necessary state or federal permit or certificate for the facility and the process of judicial review of any such permit or certificate.

(5) The provisions of subsection (4) apply to any facility for which a certificate has not been issued or for which construction is yet to be commenced."

Section 5. Section 75-20-304, MCA, is amended to read:

"75-20-304. Waiver of provisions of certification proceedings. (1) The board may waive compliance with any of the provisions of 75-20-216 through 75-20-222, 75-20-501, and this part if the applicant makes a clear and convincing showing to the board at a public hearing that an immediate, urgent need for a facility exists and that the applicant did not have knowledge that the need for the facility existed sufficiently in advance to fully comply with the provisions of 75-20-216 through 75-20-222, 75-20-501, and this part.

(2) The board may waive compliance with any of the provisions of this chapter upon receipt of notice by a utility or person subject to this chapter that a facility or

1 associated facility has been damaged or destroyed as a
 2 result of fire, flood, or other natural disaster or as the
 3 result of insurrection, war, or other civil disorder and
 4 there exists an immediate need for construction of a new
 5 facility or associated facility or the relocation of a
 6 previously existing facility or associated facility in order
 7 to promote the public welfare.

8 (3) The board shall waive compliance with the
 9 requirements of subsections (2)(c), (3)(b), and (3)(c) of
 10 75-20-301 and 75-20-501(5) and the requirements of
 11 subsections (1)(a)(iv) and (v) of 75-20-211, 75-20-216(3),
 12 and 75-20-303(3)(a)(iv) relating to consideration of
 13 alternative sites if the applicant makes a clear and
 14 convincing showing to the board at a public hearing that:

15 (a) a proposed facility will be constructed in a
 16 county where a single employer within the county has
 17 permanently curtailed or ceased operations causing a loss of
 18 250 or more permanent jobs within 2 years at the employer's
 19 operations within the preceding 10-year period;

20 (b) the county and municipal governing bodies in whose
 21 jurisdiction the facility is proposed to be located support
 22 by resolution such a waiver;

23 (c) the proposed facility will be constructed within a
 24 15-mile radius of the operations that have ceased or been
 25 curtailed; and

1 (d) the proposed facility will have a beneficial
 2 effect on the economy of the county in which the facility is
 3 proposed to be located.

4 (4) The waiver provided for in subsection (3) applies
 5 only to permanent job losses by a single employer. The
 6 waiver provided for in subsection (3) does not apply to jobs
 7 of a temporary or seasonal nature, including but not limited
 8 to construction jobs or job losses during labor disputes.

9 (5) The waiver provided for in subsection (3) does not
 10 apply to consideration of alternatives or minimum adverse
 11 environmental impact for a facility defined in subsections
 12 (10)(b), (c), (d), ~~(e)~~ or ~~(f)~~ (f) of 75-20-104, for an
 13 associated facility defined in subsection (3) of 75-20-104,
 14 or for any portion of or process in a facility defined in
 15 subsection (10)(a) of 75-20-104 to the extent that the
 16 process or portion of the facility is not subject to a
 17 permit issued by the department of health or board of
 18 health.

19 (6) The applicant shall pay all expenses required to
 20 process and conduct a hearing on a waiver request under
 21 subsection (3). However, any payments made under this
 22 subsection shall be credited toward the fee paid under
 23 75-20-215 to the extent the data or evidence presented at
 24 the hearing or the decision of the board under subsection
 25 (3) can be used in making a certification decision under

1 this chapter.

2 (7) The board may grant only one waiver under
3 subsections (3) and (4) for each permanent loss of jobs as
4 defined in subsection (3)(a)."

5 Section 6. Section 75-20-1202, MCA, is amended to
6 read:

7 "75-20-1202. Definitions. As used in this part and
8 75-20-201 through 75-20-203, the following definitions
9 apply:

10 (1) (a) "Nuclear facility" means each plant, unit, or
11 other facility designed for, or capable of,

12 (i) generating 50 megawatts of electricity or more by
13 means of nuclear fission;

14 (ii) converting, enriching, fabricating, or
15 reprocessing uranium minerals or nuclear fuels, or

16 (iii) storing or disposing of radioactive wastes or
17 materials from a nuclear facility;

18 (b) "nuclear facility" does not include any
19 small-scale facility used solely for educational, research,
20 or medical purposes not connected with the commercial
21 generation of energy.

22 (2) "Facility," as defined in 75-20-104~~(7)~~⁽¹⁰⁾ is
23 further defined to include any nuclear facility as defined
24 in subsection (1)(a) of this section."

25 Section 7. Section 85-1-205, MCA, is amended to read:

1 "85-1-205. Acquisition of water in Fort-Peek-Reservoir
2 federal ~~reservoirs~~. The department may acquire water by
3 purchase option or agreement with the federal government
4 from the ~~Fort-Peek-Reservoir~~ any federal reservoir for the
5 purpose of sale, rent, or distribution for industrial use.
6 In such cases, the department is not required to construct
7 any diversion or appropriation facilities or works, and it
8 may sell, rent, or distribute such water at such rates and
9 under such terms and conditions ~~as it considers appropriate~~
10 as are established under the provisions of 85-2-311."

11 Section 8. Section 85-2-311, MCA, is amended to read:

12 "85-2-311. Criteria for issuance of permit. ~~the (1)~~
13 Except as provided in subsections (2) and (3), the
14 department shall issue a permit if the applicant proves by
15 substantial credible evidence that the following criteria
16 are met:

17 ~~(a)~~⁽¹⁾ there are unappropriated waters in the source
18 of supply;

19 ~~(b)~~⁽¹⁾ at times when the water can be put to the use
20 proposed by the applicant;

21 ~~(c)~~⁽¹⁾ in the amount the applicant seeks to
22 appropriate; and

23 ~~(d)~~⁽¹⁾ throughout the period during which the
24 applicant seeks to appropriate, the amount requested is
25 available;

1 ~~(2)(b)~~ the rights of a prior appropriator will not be
 2 adversely affected;
 3 ~~(3)(c)~~ the proposed means of diversion, construction,
 4 and operation of the appropriation works are adequate;
 5 ~~(4)(d)~~ the proposed use of water is a beneficial use;
 6 ~~(5)(e)~~ the proposed use will not interfere
 7 unreasonably with other planned uses or developments for
 8 which a permit has been issued or for which water has been
 9 reserved;
 10 ~~(6)---an---applicant---for---an---appropriation---of---10,000~~
 11 ~~acre-feet-a-year-or-more-and-15-cubic-feet-per-second-or~~
 12 ~~more-proves-by-clear-and-convincing-evidence-that-the-rights~~
 13 ~~of-a-prior-appropriator-will-not-be-adversely-affected;~~
 14 ~~(7)---except---as---provided---in---subsection---(6)---the~~
 15 ~~applicant---proves---by---substantial---credible---evidence---the~~
 16 ~~criteria-listed-in-subsections-(1)---through---(5).~~
 17 (2) (a) The department may not issue a permit for an
 18 appropriation of 5x888 10,000 or more acre-feet of water a
 19 year or 15 or more cubic feet per second of water unless:
 20 (i) the department makes an affirmative finding that:
 21 (A) the criteria in subsection (1) are met;
 22 (B) the applicant has proven by clear and convincing
 23 evidence that the rights of a prior appropriator will not be
 24 adversely affected; and
 25 (c) the proposed appropriation is in the public

1 interests and
 2 (ii) the legislature affirms the findings pursuant to
 3 subsection (2)(c);
 4 (b) In making such a finding, the department shall
 5 consider:
 6 (i) existing demands on the state water supply, as
 7 well as projected demands such as reservations of water for
 8 future beneficial purposes, including municipal water
 9 supplies, irrigation systems, and minimum streamflows for
 10 the protection of existing water rights and aquatic life;
 11 (ii) the benefits to the applicant and the state;
 12 (iii) the economic feasibility of the project;
 13 (iv) the effects on the quantity, quality, and
 14 potability of water of existing beneficial uses in the
 15 source of supply;
 16 (v) the effects on private property rights by any
 17 creation of or contribution to saline seep; and
 18 (vi) the probable significant adverse environmental
 19 impacts of the proposed use of water as determined by the
 20 department pursuant to Title 75, chapter 1, or Title 75,
 21 chapter 20.
 22 (c) A permit for an appropriation FOR A DIVERSION FOR
 23 A CONSUMPTIVE USE of 5x888 10,000 or more acre-feet of water
 24 a year or 15 or more cubic feet per second of water under
 25 subsection (2) may not be issued unless the department

~~petitions the legislature and the legislature affirms the
findings of the department.~~

~~(3) An appropriation, diversion, impoundment,
restraint, or attempted appropriation, diversion,
impoundment, or restraint contrary to the provisions of this
section is null and void. No officer, agent, agency, or
employee of the state may knowingly permit, aid, or assist
in any manner such unauthorized appropriation, diversion,
impoundment, or other restraint. No person or corporation
may, directly or indirectly, personally or through an agent,
officer, or employee, attempt to appropriate, divert,
impound, or otherwise restrain or control any of the waters
within the boundaries of this state except in accordance
with this section."~~

~~NEW SECTION. Section 9. Repealer. Section 85-1-121,
MCA, is repealed.~~

~~NEW SECTION. Section 10. Study of water marketing.~~

~~(1) There is a select committee on water marketing. The
select committee consists of eight members. The senate
committee on committees and the speaker of the house of
representatives shall each appoint four members on a
bipartisan basis. The select committee shall meet as often
as necessary to complete the study of water marketing
required under this section.~~

~~(2) The select committee on water marketing shall~~

undertake a study of the economic, tax, administrative,
legal, social, and environmental advantages and
disadvantages of water marketing.

(3) The select committee shall study the desirability
and feasibility of in-state and out-of-state marketing of
limited amounts of water for industrial purposes from
existing state and federal reservoirs and from proposed
reservoirs with water reservations.

(4) The study must include:

(a) the present and future in-state demands for water
for domestic, municipal, agricultural, industrial,
recreational, in-stream flows, and other beneficial uses;

(b) how best to encourage a negotiated resolution of
the conflicting demands of water users within the Missouri
River basin and to discourage litigation and congressional
action initiated by lower basin states;

(c) the potential effects of a coal slurry pipeline on
coal production and the economic and environmental effects
of increased coal production;

(d) the effects of a coal slurry pipeline on the
railroad industry and rail rates for noncoal shippers;

(e) alternative structures for a water marketing
program;

(f) alternative uses of revenue derived from water
marketing; and

1 (g) the potential ecological effects of the
2 installation and operation of coal slurry pipelines.

3 (5) The select committee shall solicit the advice of
4 the department of natural resources and conservation,
5 various interested industries, conservation groups,
6 appropriate state and federal agencies, and the public in
7 carrying out its duties under this section.

8 (6) The environmental quality council shall provide
9 staff assistance to the select committee. The select
10 committee may contract with experts and consultants, in
11 addition to assistance from the environmental quality
12 council staff, in carrying out its duties under this
13 section.

14 (7) The select committee shall report its findings and
15 recommendations for legislation, if any, to the 49th
16 legislature.

17 ~~NEW_SECTION.~~ Section 11. Appropriation. There is
18 appropriated from the renewable resource development
19 clearance fund account to the environmental quality council
20 for the biennium ending June 30, 1985, \$80,000 for the study
21 of water marketing by the select committee on water
22 marketing required by section 10.

23 ~~NEW_SECTION.~~ Section 12. Severability. If a part of
24 this act is invalid, all valid parts that are severable from
25 the invalid part remain in effect. If a part of this act is

1 invalid in one or more of its applications, the part remains
2 in effect in all valid applications that are severable from
3 the invalid applications.

4 ~~NEW_SECTION.~~ Section 13. Effective date. This act is
5 effective on passage and approval.

-End-

HOUSE BILL NO. 908

INTRODUCED BY HARPER, BARDANOUVE, IVERSON,

VINCENT, KEMMIS, ASAY, FABREGA

A BILL FOR AN ACT ENTITLED: "AN ACT ADDING CERTAIN PIPELINES TO THE DEFINITION OF "FACILITY" UNDER THE MONTANA MAJOR FACILITY SITING ACT; PROHIBITING THE ISSUANCE OF PERMITS FOR CERTAIN AMOUNTS OF WATER WITHOUT LEGISLATIVE APPROVAL; PROVIDING FOR A STUDY BY A SELECT COMMITTEE OF WATER MARKETING; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 75-20-104, 75-20-216, 75-20-218, 75-20-303, 75-20-304, 75-20-1202, 85-1-205, AND 85-2-311, MCA; REPEALING SECTION 85-1-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 75-20-104, MCA, is amended to read:

"75-20-104. Definitions. In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Addition thereto" means the installation of new machinery and equipment which would significantly change the conditions under which the facility is operated.

(2) "Application" means an application for a certificate submitted in accordance with this chapter and the rules adopted hereunder.

(3) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion dams, transmission substations, storage ponds, reservoirs, and any other device or equipment associated with the production or delivery of the energy form or product produced by a facility, except that the term does not include a facility.

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

(5) "Board of health" means the board of health and environmental sciences provided for in 2-15-2104.

(6) "Certificate" means the certificate of environmental compatibility and public need issued by the board under this chapter that is required for the construction or operation of a facility.

(7) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

(b) the fracturing of underground formations by any means if such activity is related to the possible future development of a gasification facility or a facility

1 employing geothermal resources but does not include the
2 gathering of geological data by boring of test holes or
3 other underground exploration, investigation, or
4 experimentation;

5 (c) the commencement of eminent domain proceedings
6 under Title 70, chapter 30, for land or rights-of-way upon
7 or over which a facility may be constructed;

8 (d) the relocation or upgrading of an existing
9 facility defined by (b) or (c) of subsection (10), including
10 upgrading to a design capacity covered by subsection
11 (10)(b), except that the term does not include normal
12 maintenance or repair of an existing facility.

13 (8) "Department" means the department of natural
14 resources and conservation provided for in Title 2, chapter
15 15, part 33.

16 (9) "Department of health" means the department of
17 health and environmental sciences provided for in Title 2,
18 chapter 15, part 21.

19 (10) "Facility" means:

20 (a) except for crude oil and natural gas refineries,
21 and facilities and associated facilities designed for or
22 capable of producing, gathering, processing, transmitting,
23 transporting, or distributing crude oil or natural gas, and
24 those facilities subject to The Montana Strip and
25 Underground Mine Reclamation Act, each plant, unit, or other

1 facility and associated facilities designed for or capable
2 of:

3 (i) generating 50 megawatts of electricity or more or
4 any addition thereto (except pollution control facilities
5 approved by the department of health and environmental
6 sciences added to an existing plant) having an estimated
7 cost in excess of \$10 million;

8 (ii) producing 25 million cubic feet or more of gas
9 derived from coal per day or any addition thereto having an
10 estimated cost in excess of \$10 million;

11 (iii) producing 25,000 barrels of liquid hydrocarbon
12 products per day or more or any addition thereto having an
13 estimated cost in excess of \$10 million;

14 (iv) enriching uranium minerals or any addition thereto
15 having an estimated cost in excess of \$10 million; or

16 (v) utilizing or converting 500,000 tons of coal per
17 year or more or any addition thereto having an estimated
18 cost in excess of \$10 million;

19 (b) each electric transmission line and associated
20 facilities of a design capacity of more than 69 kilovolts,
21 except that the term does not include an electric
22 transmission line and associated facilities of a design
23 capacity of 230 kilovolts or less and 10 miles or less in
24 length;

25 (c) each pipeline and associated facilities designed

1 for or capable of transporting gas (except for natural gas) or
 2 water or liquid hydrocarbon products from or to a facility
 3 located within or without this state of the size indicated
 4 in subsection (10)(a) of this section;

5 ~~(d) each pipeline greater than 20 inches in diameter~~
 6 ~~or AND 30 miles in length and associated facilities designed~~
 7 ~~AND INTENDED for or capable of transporting water or using~~
 8 ~~water as a transport medium;~~

9 ~~(d)(2)~~ any use of geothermal resources, including the
 10 use of underground space in existence or to be created, for
 11 the creation, use, or conversion of energy, designed for or
 12 capable of producing geothermally derived power equivalent
 13 to 25 million Btu per hour or more or any addition thereto
 14 having an estimated cost in excess of \$750,000;

15 ~~(e)(f)~~ any underground in situ gasification of coal.

16 (11) "Person" means any individual, group, firm,
 17 partnership, corporation, cooperative, association,
 18 government subdivision, government agency, local government,
 19 or other organization or entity.

20 (12) "Transmission substation" means any structure,
 21 device, or equipment assemblage, commonly located and
 22 designed for voltage regulation, circuit protection, or
 23 switching necessary for the construction or operation of a
 24 proposed transmission line.

25 (13) "Utility" means any person engaged in any aspect

1 of the production, storage, sale, delivery, or furnishing of
 2 heat, electricity, gas, hydrocarbon products, or energy in
 3 any form for ultimate public use."

4 Section 2. Section 75-20-216, MCA, is amended to read:

5 "75-20-216. Study, evaluation, and report on proposed
 6 facility -- assistance by other agencies. (1) After receipt
 7 of an application, the department and department of health
 8 shall within 90 days notify the applicant in writing that:

9 (a) the application is in compliance and is accepted
 10 as complete; or

11 (b) the application is not in compliance and list the
 12 deficiencies therein; and upon correction of these
 13 deficiencies and resubmission by the applicant, the
 14 department and department of health shall within 30 days
 15 notify the applicant in writing that the application is in
 16 compliance and is accepted as complete.

17 (2) Upon receipt of an application complying with
 18 75-20-211 through 75-20-215, and this section, the
 19 department shall commence an intensive study and evaluation
 20 of the proposed facility and its effects, considering all
 21 applicable criteria listed in 75-20-301 and 75-20-503 and
 22 the department of health shall commence a study to enable it
 23 or the board of health to issue a decision, opinion, order,
 24 certification, or permit as provided in subsection (3). The
 25 department and department of health shall use, to the extent

1 they consider applicable, valid and useful existing studies
2 and reports submitted by the applicant or compiled by a
3 state or federal agency.

4 (3) The department of health shall within 1 year
5 following the date of acceptance of an application and the
6 board of health or department of health, if applicable,
7 within an additional 6 months issue any decision, opinion,
8 order, certification, or permit required under the laws
9 administered by the department of health or the board of
10 health and this chapter. The department of health and the
11 board of health shall determine compliance with all
12 standards, permit requirements, and implementation plans
13 under their jurisdiction for the primary and reasonable
14 alternate locations in their decision, opinion, order,
15 certification, or permit. The decision, opinion, order,
16 certification, or permit, with or without conditions, is
17 conclusive on all matters that the department of health and
18 board of health administer, and any of the criteria
19 specified in subsections (2) through (7) of 75-20-503 that
20 are a part of the determinations made under the laws
21 administered by the department of health and the board of
22 health. Although the decision, opinion, order,
23 certification, or permit issued under this subsection is
24 conclusive, the board retains authority to make the
25 determination required under 75-20-301(2)(c). The decision,

1 opinion, order, certification, or permit of the department
2 of health or the board of health satisfies the review
3 requirements by those agencies and shall be acceptable in
4 lieu of an environmental impact statement under the Montana
5 Environmental Policy Act. A copy of the decision, opinion,
6 order, certification, or permit shall be served upon the
7 department and the board and shall be utilized as part of
8 their final site selection process. Prior to the issuance of
9 a preliminary decision by the department of health and
10 pursuant to rules adopted by the board of health, the
11 department of health shall provide an opportunity for public
12 review and comment.

13 (4) Within 22 months following acceptance of an
14 application for a facility as defined in (a) and ~~(d)~~ (e) of
15 75-20-104(10) and for a facility as defined in (b) ~~and (c)~~
16 ~~through (d)~~ of 75-20-104(10) which is more than 30 miles in
17 length and within 1 year for a facility as defined in (b)
18 ~~and (c)~~ ~~through (d)~~ of 75-20-104(10) which is 30 miles or
19 less in length, the department shall make a report to the
20 board which shall contain the department's studies,
21 evaluations, recommendations, other pertinent documents
22 resulting from its study and evaluation, and an
23 environmental impact statement or analysis prepared pursuant
24 to the Montana Environmental Policy Act, if any. If the
25 application is for a combination of two or more facilities,

1 the department shall make its report to the board within the
2 greater of the lengths of time provided for in this
3 subsection for either of the facilities.

4 (5) The departments of highways; commerce; fish,
5 wildlife, and parks; state lands; revenue; and public
6 service regulation shall report to the department
7 information relating to the impact of the proposed site on
8 each department's area of expertise. The report may include
9 opinions as to the advisability of granting, denying, or
10 modifying the certificate. The department shall allocate
11 funds obtained from filing fees to the departments making
12 reports to reimburse them for the costs of compiling
13 information and issuing the required report."

14 Section 3. Section 75-20-218, MCA, is amended to read:

15 "75-20-218. Hearing date -- location -- department to
16 act as staff -- hearings to be held jointly. (1) Upon
17 receipt of the department's report submitted under
18 75-20-216, the board shall set a date for a hearing to begin
19 not more than 120 days after the receipt. ~~except for those~~
20 ~~hearings involving applications submitted for facilities as~~
21 ~~defined in (b) and (c) of 75-20-104(1)(i), certification~~
22 ~~Certification~~ hearings shall be conducted by the board in
23 the county seat of Lewis and Clark County or the county in
24 which the facility or the greater portion thereof is to be
25 located.

1 (2) Except as provided in 75-20-221(2), the department
2 shall act as the staff for the board throughout the
3 decisionmaking process and the board may request the
4 department to present testimony or cross-examine witnesses
5 as the board considers necessary and appropriate.

6 (3) At the request of the applicant, the department of
7 health and the board of health shall hold any required
8 permit hearings required under laws administered by those
9 agencies in conjunction with the board certification
10 hearing. In such a conjunctive hearing the time periods
11 established for reviewing an application and for issuing a
12 decision on certification of a proposed facility under this
13 chapter supersede the time periods specified in other laws
14 administered by the department of health and the board of
15 health."

16 Section 4. Section 75-20-303, MCA, is amended to read:

17 "75-20-303. Opinion issued with decision -- contents.
18 (1) In rendering a decision on an application for a
19 certificate, the board shall issue an opinion stating its
20 reasons for the action taken.

21 (2) If the board has found that any regional or local
22 law or regulation which would be otherwise applicable is
23 unreasonably restrictive pursuant to 75-20-301(2)(f), it
24 shall state in its opinion the reasons therefor.

25 (3) Any certificate issued by the board shall include

1 the following:

2 (a) an environmental evaluation statement related to
3 the facility being certified. The statement shall include
4 but not be limited to analysis of the following information:

5 (i) the environmental impact of the proposed facility;

6 (ii) any adverse environmental effects which cannot be
7 avoided by issuance of the certificate;

8 (iii) problems and objections raised by other federal
9 and state agencies and interested groups;

10 (iv) alternatives to the proposed facility;

11 (v) a plan for monitoring environmental effects of the
12 proposed facility; and

13 (vi) a time limit as provided in subsection (4), during
14 which construction of the facility must be completed;

15 (b) a statement signed by the applicant showing
16 agreement to comply with the requirements of this chapter
17 and the conditions of the certificate.

18 (4) The board shall issue as part of the certificate
19 the following time limits during which construction of a
20 facility must be completed:

21 (a) For a facility as defined in (b) ~~1. (c) or (e)~~ (d)
22 of 75-20-104~~(7)~~~~(10)~~ that is more than 30 miles in length,
23 the time limit is 10 years.

24 (b) For a facility as defined in (b) ~~1. (c) or (e)~~ (d)
25 of 75-20-104~~(7)~~~~(10)~~ that is 30 miles or less in length, the

1 time limit is 5 years.

2 (c) The time limit shall be extended for periods of 2
3 years each upon a showing by the applicant to the board that
4 a good faith effort is being undertaken to complete
5 construction. Under this subsection, a good faith effort to
6 complete construction includes the process of acquiring any
7 necessary state or federal permit or certificate for the
8 facility and the process of judicial review of any such
9 permit or certificate.

10 (5) The provisions of subsection (4) apply to any
11 facility for which a certificate has not been issued or for
12 which construction is yet to be commenced."

13 Section 5. Section 75-20-304, MCA, is amended to read:

14 "75-20-304. Waiver of provisions of certification
15 proceedings. (1) The board may waive compliance with any of
16 the provisions of 75-20-216 through 75-20-222, 75-20-501,
17 and this part if the applicant makes a clear and convincing
18 showing to the board at a public hearing that an immediate,
19 urgent need for a facility exists and that the applicant did
20 not have knowledge that the need for the facility existed
21 sufficiently in advance to fully comply with the provisions
22 of 75-20-216 through 75-20-222, 75-20-501, and this part.

23 (2) The board may waive compliance with any of the
24 provisions of this chapter upon receipt of notice by a
25 utility or person subject to this chapter that a facility or

1 associated facility has been damaged or destroyed as a
 2 result of fire, flood, or other natural disaster or as the
 3 result of insurrection, war, or other civil disorder and
 4 there exists an immediate need for construction of a new
 5 facility or associated facility or the relocation of a
 6 previously existing facility or associated facility in order
 7 to promote the public welfare.

8 (3) The board shall waive compliance with the
 9 requirements of subsections (2)(c), (3)(b), and (3)(c) of
 10 75-20-301 and 75-20-501(5) and the requirements of
 11 subsections (1)(a)(iv) and (v) of 75-20-211, 75-20-216(3),
 12 and 75-20-303(3)(a)(iv) relating to consideration of
 13 alternative sites if the applicant makes a clear and
 14 convincing showing to the board at a public hearing that:

15 (a) a proposed facility will be constructed in a
 16 county where a single employer within the county has
 17 permanently curtailed or ceased operations causing a loss of
 18 250 or more permanent jobs within 2 years at the employer's
 19 operations within the preceding 10-year period;

20 (b) the county and municipal governing bodies in whose
 21 jurisdiction the facility is proposed to be located support
 22 by resolution such a waiver;

23 (c) the proposed facility will be constructed within a
 24 15-mile radius of the operations that have ceased or been
 25 curtailed; and

1 (d) the proposed facility will have a beneficial
 2 effect on the economy of the county in which the facility is
 3 proposed to be located.

4 (4) The waiver provided for in subsection (3) applies
 5 only to permanent job losses by a single employer. The
 6 waiver provided for in subsection (3) does not apply to jobs
 7 of a temporary or seasonal nature, including but not limited
 8 to construction jobs or job losses during labor disputes.

9 (5) The waiver provided for in subsection (3) does not
 10 apply to consideration of alternatives or minimum adverse
 11 environmental impact for a facility defined in subsections
 12 (10)(b), (c), (d), ~~(e)~~ or ~~(f)~~ of 75-20-104, for an
 13 associated facility defined in subsection (3) of 75-20-104,
 14 or for any portion of or process in a facility defined in
 15 subsection (10)(a) of 75-20-104 to the extent that the
 16 process or portion of the facility is not subject to a
 17 permit issued by the department of health or board of
 18 health.

19 (6) The applicant shall pay all expenses required to
 20 process and conduct a hearing on a waiver request under
 21 subsection (3). However, any payments made under this
 22 subsection shall be credited toward the fee paid under
 23 75-20-215 to the extent the data or evidence presented at
 24 the hearing or the decision of the board under subsection
 25 (3) can be used in making a certification decision under

1 this chapter.

2 (7) The board may grant only one waiver under
3 subsections (3) and (4) for each permanent loss of jobs as
4 defined in subsection (3)(a)."

5 Section 6. Section 75-20-1202, MCA, is amended to
6 read:

7 "75-20-1202. Definitions. As used in this part and
8 75-20-201 through 75-20-203, the following definitions
9 apply:

10 (1) (a) "Nuclear facility" means each plant, unit, or
11 other facility designed for, or capable of,

12 (i) generating 50 megawatts of electricity or more by
13 means of nuclear fission;

14 (ii) converting, enriching, fabricating, or
15 reprocessing uranium minerals or nuclear fuels, or

16 (iii) storing or disposing of radioactive wastes or
17 materials from a nuclear facility;

18 (b) "nuclear facility" does not include any
19 small-scale facility used solely for educational, research,
20 or medical purposes not connected with the commercial
21 generation of energy.

22 (2) "Facility," as defined in 75-20-104~~(7)~~⁽¹⁰⁾ is
23 further defined to include any nuclear facility as defined
24 in subsection (1)(a) of this section."

25 Section 7. Section 85-1-205, MCA, is amended to read:

1 "85-1-205. Acquisition of water in Fort-Peek-Reservoir
2 ~~federal reservoirs.~~ The department may acquire water by
3 purchase option or agreement with the federal government
4 from the ~~Fort-Peek-Reservoir~~ any federal reservoir for the
5 purpose of sale, rent, or distribution for industrial use.
6 In such cases, the department is not required to construct
7 any diversion or appropriation facilities or works, and it
8 may sell, rent, or distribute such water at such rates and
9 under such terms and conditions ~~as it considers appropriate~~
10 as are established under the provisions of 85-2-311."

11 Section 8. Section 85-2-311, MCA, is amended to read:

12 "85-2-311. Criteria for issuance of permit. ~~The~~ 11
13 Except as provided in subsections (2) and (3), the
14 department shall issue a permit if the applicant proves by
15 substantial credible evidence that the following criteria
16 are met:

17 ~~(i)~~ (i) there are unappropriated waters in the source
18 of supply;

19 ~~(ii)~~ (ii) at times when the water can be put to the use
20 proposed by the applicant;

21 ~~(iii)~~ (iii) in the amount the applicant seeks to
22 appropriate; and

23 ~~(iv)~~ (iv) throughout the period during which the
24 applicant seeks to appropriate, the amount requested is
25 available;

~~(2)(b)~~ the rights of a prior appropriator will not be adversely affected;

~~(3)(c)~~ the proposed means of diversion, construction, and operation of the appropriation works are adequate;

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

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

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

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

~~(2) (a) The department may not issue a permit for an appropriation of 5,000 10,000 or more acre-feet of water a year or 7 15 or more cubic feet per second of water unless:~~

~~(i) the department makes an affirmative finding that:~~

~~(A) the criteria in subsection (1) are met;~~

~~(B) the applicant has proven by clear and convincing evidence that the rights of a prior appropriator will not be adversely affected; and~~

~~(C) the proposed appropriation is in the public~~

~~interest; and~~

~~(iii) the legislature affirms the findings pursuant to subsection (2)(c);~~

~~(b) In making such a finding, the department shall consider:~~

~~(i) existing demands on the state water supply, as well as projected demands such as reservations of water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;~~

~~(ii) the benefits to the applicant and the state;~~

~~(iii) the economic feasibility of the project;~~

~~(iv) the effects on the quantity, quality, and porability of water of existing beneficial uses in the source of supply;~~

~~(v) the effects on private property rights by any creation of or contribution to saline seep; and~~

~~(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.~~

~~(c) A permit for an appropriation FOR A DIVERSION FOR A CONSUMPTIVE USE of 5,000 10,000 or more acre-feet of water a year or 7 15 or more cubic feet per second of water under subsection (2) may not be issued unless the department~~

~~petitions the legislature and the legislature affirms the findings of the department.~~

~~(3) An appropriation, diversion, impoundment, restraint, or attempted appropriation, diversion, impoundment, or restraint contrary to the provisions of this section is null and void. No officer, agent, agency, or employee of the state may knowingly permit, aid, or assist in any manner such unauthorized appropriation, diversion, impoundment, or other restraint. No person or corporation may, directly or indirectly, personally or through an agent, officer, or employee, attempt to appropriate, divert, impound, or otherwise restrain or control any of the waters within the boundaries of this state except in accordance with this section."~~

~~NEW SECTION. Section 9. Repealer. Section 85-1-121, MCA, is repealed.~~

~~NEW SECTION. Section 10. Study of water marketing.~~

~~(1) There is a select committee on water marketing. The select committee consists of eight members. The senate committee on committees and the speaker of the house of representatives shall each appoint four members on a bipartisan basis. The select committee shall meet as often as necessary to complete the study of water marketing required under this section.~~

~~(2) The select committee on water marketing shall~~

undertake a study of the economic, tax, administrative, legal, social, and environmental advantages and disadvantages of water marketing.

(3) The select committee shall study the desirability and feasibility of in-state and out-of-state marketing of limited amounts of water for industrial purposes from existing state and federal reservoirs and from proposed reservoirs with water reservations.

(4) The study must include:

(a) the present and future in-state demands for water for domestic, municipal, agricultural, industrial, recreational, in-stream flows, and other beneficial uses;

(b) how best to encourage a negotiated resolution of the conflicting demands of water users within the Missouri River basin and to discourage litigation and congressional action initiated by lower basin states;

(c) the potential effects of a coal slurry pipeline on coal production and the economic and environmental effects of increased coal production;

(d) the effects of a coal slurry pipeline on the railroad industry and rail rates for noncoal shippers;

(e) alternative structures for a water marketing program;

(f) alternative uses of revenue derived from water marketing; and

1 (g) the potential ecological effects of the
2 installation and operation of coal slurry pipelines.

3 (5) The select committee shall solicit the advice of
4 the department of natural resources and conservation,
5 various interested industries, conservation groups,
6 appropriate state and federal agencies, and the public in
7 carrying out its duties under this section.

8 (6) The environmental quality council shall provide
9 staff assistance to the select committee. The select
10 committee may contract with experts and consultants, in
11 addition to assistance from the environmental quality
12 council staff, in carrying out its duties under this
13 section.

14 (7) The select committee shall report its findings and
15 recommendations for legislation, if any, to the 49th
16 legislature.

17 ~~NEW SECTION.~~ Section 11. Appropriation. There is
18 appropriated from the renewable resource development
19 clearance fund account to the environmental quality council
20 for the biennium ending June 30, 1985, \$80,000 for the study
21 of water marketing by the select committee on water
22 marketing required by section 10.

23 ~~NEW SECTION.~~ Section 12. Severability. If a part of
24 this act is invalid, all valid parts that are severable from
25 the invalid part remain in effect. If a part of this act is

1 invalid in one or more of its applications, the part remains
2 in effect in all valid applications that are severable from
3 the invalid applications.

4 ~~NEW SECTION.~~ Section 13. Effective date. This act is
5 effective on passage and approval.

-End-

STANDING COMMITTEE REPORT

April 7th, 19 83

MR. **PRESIDENT**

We, your committee on **Senate Rules**

having had under consideration **House** Bill No. **908**

Respectfully report as follows: That **House** Bill No. **908**

is reported out of committee as having been properly received for consideration by the Senate and that the bill be referred to the proper committee amended as follows:

1. Title, lines 5 through 10.
Following: "AN ACT" on line 5
Strike: The remainder of line 5 through "MARKETING" on line 10.
2. Page 1, line 10.
Strike: "PROVIDING AN APPROPRIATION;"
3. Page 21, lines 17 through 22.
Strike: Section 11 in its entirety.

~~DC-2438~~

April 14, 1983

SENATE STANDING COMMITTEE REPORT
(Agriculture, Livestock & Irrigation)

That House Bill No. 908 be amended as follows:

1. Title, line 10.

Following: "MARKETING"

Insert: "PROVIDING FOR THE AMENDMENT AND STUDY OF THE LAWS RELATED
TO THE ACQUISITION, TRANSPORTATION, AND USE OF WATER"

2. Title, lines 11 and 12.

Strike: "75-20-104," on line 11 through "75-20-1202," on line 12.

Following: "85-1-205" on line 12

Strike: ", "

3. Title, line 14.

Following: "DATE"

Insert: "AND A TERMINATION DATE"

4. Page 1, line 17 through line 24 on page 15.

Strike: Sections 1 through 6 in their entirety

Renumber: subsequent sections

5. Page 16, line 2.

Following: "."

Insert: "(1)"

Following: "water"

Insert: "or water storage"

6. Page 16, line 5.

Following: "industrial"

Strike: "use"

Insert: "and other uses"

7. Page 16, line 10.

Strike: "as" through "85-2-311"

Insert: "as it considers appropriate, except as provided in subsection
(2). (2) Until a final decree has been issued pursuant to 85-2-234
concerning the waters in a federal reservoir, the department may sell,
rent, or distribute such water only after a permit has been issued to
an applicant for purchase, rent, or distribution of water in accor-
dance with part 3 of this chapter"

8. Page 17, line 17 through line 2 on page 19.

Strike: These lines in their entirety

Insert: "(2) A permit for an appropriation of 10,000 or more acre-feet
of water a year or 15 or more cubic feet per second of water on appli-
cations filed with the department after [the effective date of this
act] may not be issued unless the department petitions the legisla-
ture and the legislature affirms the issuance by the department."

9. Page 19, line 12.

Strike: "any of the"

10. Page 22, line 6.

Following: line 5

Insert: "NEW SECTION. Section 7. Termination date. This act terminates
on July 1, 1985."

April 14, 1983

SENATE COMMITTEE OF THE WHOLE AMENDMENT

That House Bill No. 908 be amended as follows:

1. Page 16, line 13.

Strike: "and (3)"

Insert: "through (4)"

2. Page 19, line 3.

Following: line 2

Insert: "(2) The department may not issue a permit for an appropriation of 10,000 or more acre-feet of water a year or 15 or more cubic feet per second of water unless the applicant has proven by clear and convincing evidence that the rights of a prior appropriator will not be adversely affected."

Renumber: subsequent subsections

HOUSE BILL NO. 908

INTRODUCED BY HARPER, BARDANOUVE, IVERSON,

VINCENT, KEMMIS, ASAY, FABREGA

A BILL FOR AN ACT ENTITLED: "AN ACT ADDING--CERTAIN PIPELINES--TO THE DEFINITION OF "FACILITY"--UNDER THE MONTANA MAJOR FACILITY--SITING--ACT;--PROHIBITING--THE--ISSUANCE--OF PERMITS--FOR--CERTAIN--AMOUNTS--OF WATER--WITHOUT--LEGISLATIVE APPROVAL;--PROVIDING--FOR--A--STUDY--BY--A--SELECT--COMMITTEE--OF WATER-MARKETING PROVIDING FOR THE AMENDMENT AND STUDY OF THE LAWS RELATED TO THE ACQUISITION, TRANSPORTATION, AND USE OF WATER; PROVIDING--AN--APPROPRIATION; AMENDING SECTIONS 75-20-104, 75-20-216, 75-20-218, 75-20-303, 75-20-304, 75-20-1202, 85-1-205, AND 85-2-311, MCA; REPEALING SECTION 85-1-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE."

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

Section 1. Section 75-20-104, MCA, is amended to read:

"75-20-104. Definitions. In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Addition thereto" means the installation of new machinery and equipment which would significantly change the conditions under which the facility is operated;

(2) "Application" means an application for a

certificate submitted in accordance with this chapter and the rules adopted hereunder;

(3) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion, dams, transmission substations, storage ponds, reservoirs, and any other device or equipment associated with the production or delivery of the energy form or product produced by a facility, except that the term does not include a facility;

(4) "Board" means the board of natural resources and conservation provided for in 2-15-3302;

(5) "Board of health" means the board of health and environmental sciences provided for in 2-15-2104;

(6) "Certificate" means the certificate of environmental compatibility and public need issued by the board under this chapter that is required for the construction or operation of a facility;

(7) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

(b) the fracturing of underground formations by any

means--if--such--activity--is--related--to--the--possible--future
development--of--a--gasification--facility--or--a--facility
employing--geothermal--resources--but--does--not--include--the
gathering--of--geological--data--by--boring--of--test--holes--or
other--underground--exploratory--investigatory--or
experimentation;

(c)--the--commencement--of--eminent--domain--proceedings
under--Title--78, chapter--38, for--land--or--rights--of--way--upon
or--over--which--a--facility--may--be--constructed;

(d)--the--relocation--or--upgrading--of--an--existing
facility--defined--by--(b)--or--(c)--of--subsection--(18), including
upgrading--to--a--design--capacity--covered--by--subsection
(18)(b), except--that--the--term--does--not--include--normal
maintenance--or--repair--of--an--existing--facility;

(6)--"Department"--means--the--department--of--natural
resources--and--conservation--provided--for--in--Title--2, chapter
15, part--33;

(9)--"Department--of--health"--means--the--department--of
health--and--environmental--sciences--provided--for--in--Title--2,
chapter--15, part--21;

(10)--"Facility"--means:

(a)--except--for--crude--oil--and--natural--gas--refineries,
and--facilities--and--associated--facilities--designed--for--or
capable--of--producing, gathering, processing, transmitting,
transporting--or--distributing--crude--oil--or--natural--gas--and

those--facilities--subject--to--The--Montana--Strip--and
Underground--Mine--Reclamation--Act, each--plant, unit, or--other
facility--and--associated--facilities--designed--for--or--capable
of:

(i)--generating--50--megawatts--of--electricity--or--more--or
any--addition--thereto--(except--pollution--control--facilities
approved--by--the--department--of--health--and--environmental
sciences--added--to--an--existing--plant)--having--an--estimated
cost--in--excess--of--\$10--million;

(ii)--producing--25--million--cubic--feet--or--more--of--gas
derived--from--coal--per--day--or--any--addition--thereto--having--an
estimated--cost--in--excess--of--\$10--million;

(iii)--producing--25,000--barrels--of--liquid--hydrocarbon
products--per--day--or--more--or--any--addition--thereto--having--an
estimated--cost--in--excess--of--\$10--million;

(iv)--enriching--uranium--minerals--or--any--addition--thereto
having--an--estimated--cost--in--excess--of--\$10--million; or

(v)--utilizing--or--converting--500,000--tons--of--coal--per
year--or--more--or--any--addition--thereto--having--an--estimated
cost--in--excess--of--\$10--million;

(b)--each--electric--transmission--line--and--associated
facilities--of--a--design--capacity--of--more--than--69--kilovolts,
except--that--the--term--does--not--include--an--electric
transmission--line--and--associated--facilities--of--a--design
capacity--of--230--kilovolts--or--less--and--10--miles--or--less--in

lengths

(c) ~~each pipeline and associated facilities designed for or capable of transporting gas (except for natural gas), water, or liquid hydrocarbon products from or to a facility located within or without this state of the size indicated in subsection (10)(a) of this section~~

~~(d) each pipeline greater than 20 inches in diameter or and 20 miles in length and associated facilities designed and intended for or capable of transporting water or using water as a transport medium~~

(d)(i) ~~any use of geothermal resources including the use of underground space in existence or to be created, for the creation, use, or conversion of energy designed for or capable of producing geothermally derived power equivalent to 25 million Btu per hour or more or any addition thereto having an estimated cost in excess of \$750,000~~

(e)(i) ~~any underground in situ gasification of coals~~

(i) ~~"Person" means any individual, group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local government, or other organization or entity~~

(i2) ~~"Transmission substation" means any structure, device, or equipment, assembly, commonly located and designed for voltage regulation, circuit protection, or switching necessary for the construction or operation of a~~

proposed transmission lines

(i3) ~~"Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use~~

Section 2, Section 75-20-216, MCA, is amended to read:

"75-20-216. Study, evaluation, and report on proposed facility. --- assistance by other agencies. --- (1) After receipt of an application, the department and department of health shall, within 90 days, notify the applicant in writing that:

(a) the application is in compliance and is accepted as complete; or

(b) the application is not in compliance and list the deficiencies therein; and upon correction of these deficiencies and resubmission by the applicant, the department and department of health shall, within 30 days, notify the applicant in writing that the application is in compliance and is accepted as complete.

(2) Upon receipt of an application complying with 75-20-211 through 75-20-215, and this section, the department shall commence an intensive study and evaluation of the proposed facility and its effects, considering all applicable criteria listed in 75-20-301 and 75-20-503, and the department of health shall commence a study to enable it or the board of health to issue a decision, opinion, or order

1 certification or permit as provided in subsection (3). The
2 department and department of health shall use to the extent
3 they consider applicable, valid and useful existing studies
4 and reports submitted by the applicant or compiled by a
5 state or federal agency.

6 (3) The department of health shall within 1 year
7 following the date of acceptance of an application and the
8 board of health or department of health, if applicable
9 within an additional 6 months issue any decision, opinion,
10 order, certification or permit required under the laws
11 administered by the department of health or the board of
12 health and this chapter. The department of health and the
13 board of health shall determine compliance with all
14 standards, permit requirements and implementation plans
15 under their jurisdiction for the primary and reasonable
16 alternate locations in their decision, opinion, order,
17 certification or permit. The decision, opinion, order,
18 certification or permit, with or without conditions, is
19 conclusive on all matters that the department of health and
20 board of health administer and any of the criteria
21 specified in subsections (2) through (7) of 75-20-503 that
22 are a part of the determinations made under the laws
23 administered by the department of health and the board of
24 health. Although the decision, opinion, order,
25 certification or permit issued under this subsection is

1 conclusively the board retains authority to make the
2 determination required under 75-20-301(2)(c). The decision,
3 opinion, order, certification or permit of the department
4 of health or the board of health satisfies the review
5 requirements by those agencies and shall be acceptable in
6 lieu of an environmental impact statement under the Montana
7 Environmental Policy Act. A copy of the decision, opinion,
8 order, certification or permit shall be served upon the
9 department and the board and shall be utilized as part of
10 their final site selection process prior to the issuance of
11 a preliminary decision by the department of health and
12 pursuant to rules adopted by the board of health, the
13 department of health shall provide an opportunity for public
14 review and comments.

15 (4) Within 22 months following acceptance of an
16 application for a facility as defined in (a) and (d) of
17 75-20-104(10) and for a facility as defined in (b) and (c)
18 through (d) of 75-20-104(10) which is more than 30 miles in
19 length and within 1 year for a facility as defined in (b)
20 and (c) through (d) of 75-20-104(10) which is 30 miles or
21 less in length, the department shall make a report to the
22 board which shall contain the department's studies,
23 evaluations, recommendations, other pertinent documents
24 resulting from its study and evaluation and an
25 environmental impact statement or analysis prepared pursuant

to the Montana Environmental Policy Act, if any, if the application is for a combination of two or more facilities, the department shall make its report to the board within the greater of the lengths of time provided for in this subsection for either of the facilities.

(5) The departments of highways, commerce, fish, wildlife, and parks, state lands, revenue, and public service regulation shall report to the department information relating to the impact of the proposed site on each department's area of expertise. The report may include opinions as to the advisability of granting, denying, or modifying the certificates. The department shall allocate funds obtained from filing fees to the departments making reports to reimburse them for the costs of compiling information and issuing the required reports.

Section 3. Section 75-20-218, MCA, is amended to read:

"75-20-218. Hearing date and location. The department to act as staff shall hearings to be held jointly. (1) Upon receipt of the department's report submitted under 75-20-216, the board shall set a date for a hearing to begin not more than 120 days after the receipt. Except for those hearings involving applications submitted for facilities as defined in (b) and (c) of 75-20-104(16), certification hearings shall be conducted by the board in the county seat of Lewis and Clark County or the county in

which the facility or the greater portion thereof is to be located.

(2) Except as provided in 75-20-221(2), the department shall act as the staff for the board throughout the decisionmaking process and the board may request the department to present testimony or cross-examine witnesses as the board considers necessary and appropriate.

(3) At the request of the applicant, the department of health and the board of health shall hold any required permit hearings required under laws administered by those agencies in conjunction with the board certification hearings in such a conjunctive hearing the time periods established for reviewing an application and for issuing a decision on certification of a proposed facility under this chapter supersede the time periods specified in other laws administered by the department of health and the board of health.

Section 4. Section 75-20-303, MCA, is amended to read:

"75-20-303. Opinion issued with decision. Contents. (1) In rendering a decision on an application for a certificate, the board shall issue an opinion stating its reasons for the action taken.

(2) If the board has found that any regional or local law or regulation which would be otherwise applicable is unreasonably restrictive pursuant to 75-20-301(2)(f), it

1 shall state in its opinion the reasons therefore
 2 (3) Any certificate issued by the board shall include
 3 the following:
 4 (a) an environmental evaluation statement related to
 5 the facility being certified. The statement shall include
 6 but not be limited to analysis of the following information:
 7 (i) the environmental impact of the proposed facility;
 8 (ii) any adverse environmental effects which cannot be
 9 avoided by issuance of the certificate;
 10 (iii) problems and objections raised by other federal
 11 and state agencies and interested groups;
 12 (iv) alternatives to the proposed facility;
 13 (v) a plan for monitoring environmental effects of the
 14 proposed facility; and
 15 (vi) a time limit as provided in subsection (4) during
 16 which construction of the facility must be completed;
 17 (b) a statement signed by the applicant showing
 18 agreement to comply with the requirements of this chapter
 19 and the conditions of the certificate;
 20 (4) The board shall issue as part of the certificate
 21 the following time limits during which construction of a
 22 facility must be completed:
 23 (a) for a facility as defined in (b)(1)(A) or (c) 121
 24 of 75-20-104(7)(1)(B) that is more than 30 miles in length,
 25 the time limit is 10 years;

1 (b) For a facility as defined in (b)(1)(A) or (c) 121
 2 of 75-20-104(7)(1)(B) that is 30 miles or less in length, the
 3 time limit is 5 years;
 4 (c) The time limit shall be extended for periods of 2
 5 years each upon a showing by the applicant to the board that
 6 a good faith effort is being undertaken to complete
 7 construction under this subsection; a good faith effort to
 8 complete construction includes the process of acquiring any
 9 necessary state or federal permit or certificate for the
 10 facility and the process of judicial review of any such
 11 permit or certificate;
 12 (5) The provisions of subsection (4) apply to any
 13 facility for which a certificate has not been issued or for
 14 which construction is yet to be commenced;
 15 Section 5. Section 75-20-304, MCA, is amended to read:
 16 "75-20-304. Waiver of provisions of certificate
 17 proceedings--(1) The board may waive compliance with any of
 18 the provisions of 75-20-216 through 75-20-222, 75-20-501,
 19 and this part if the applicant makes a clear and convincing
 20 showing to the board at a public hearing that an immediate
 21 urgent need for a facility exists and that the applicant did
 22 not have knowledge that the need for the facility existed
 23 sufficiently in advance to fully comply with the provisions
 24 of 75-20-216 through 75-20-222, 75-20-501, and this part;
 25 (2) The board may waive compliance with any of the

1 provisions--of--this--chapter--upon--receipt--of--notice--by--a
 2 utility--or--person--subject--to--this--chapter--that--a--facility--or
 3 associated--facility--has--been--damaged--or--destroyed--as--a
 4 result--of--fire--flood--or--other--natural--disaster--or--as--the
 5 result--of--insurrection--war--or--other--civil--disorder--and
 6 there--exists--an--immediate--need--for--construction--of--a--new
 7 facility--or--associated--facility--or--the--relocation--of--a
 8 previously--existing--facility--or--associated--facility--in--order
 9 to--promote--the--public--welfare.

10 {3}--The--board--shall--waive--compliance--with--the
 11 requirements--of--subsections--(2)(c)--(3)(b)--and--(3)(c)--of
 12 75-20-301--and--75-20-501(5)--and--the--requirements--of
 13 subsections--(1)(a)(iv)--and--(v)--of--75-20-211--75-20-216(3)--
 14 and--75-20-303(3)(a)(iv)--relating--to--consideration--of
 15 alternative--sites--if--the--applicant--makes--a--clear--and
 16 convincing--showing--to--the--board--at--a--public--hearing--that:

17 {a}--a--proposed--facility--will--be--constructed--in--a
 18 county--where--a--single--employer--within--the--county--has
 19 permanently--curtailed--or--ceased--operations--causing--a--loss--of
 20 250--or--more--permanent--jobs--within--2--years--at--the--employer's
 21 operations--within--the--preceding--10--year--period;

22 {b}--the--county--and--municipal--governing--bodies--in--whose
 23 jurisdiction--the--facility--is--proposed--to--be--located--support
 24 by--resolution--such--a--waiver;

25 {c}--the--proposed--facility--will--be--constructed--within--a

1 15-mile--radius--of--the--operations--that--have--ceased--or--been
 2 curtailed;--and

3 {d}--the--proposed--facility--will--have--a--beneficial
 4 effect--on--the--economy--of--the--county--in--which--the--facility--is
 5 proposed--to--be--located;

6 {4}--The--waiver--provided--for--in--subsection--(3)--applies
 7 only--to--permanent--job--losses--by--a--single--employer. The
 8 waiver--provided--for--in--subsection--(3)--does--not--apply--to--jobs
 9 of--a--temporary--or--seasonal--nature--including--but--not--limited
 10 to--construction--jobs--or--job--losses--during--labor--disputes;

11 {5}--The--waiver--provided--for--in--subsection--(3)--does--not
 12 apply--to--consideration--of--alternatives--or--minimum--adverse
 13 environmental--impact--for--a--facility--defined--in--subsections
 14 (10)(b)--(c)--(d)--(5)--or--(e) if--of--75-20-104--for--an
 15 associated--facility--defined--in--subsection--(3)--of--75-20-104
 16 or--for--any--portion--of--or--process--in--a--facility--defined--in
 17 subsection--(10)(a)--of--75-20-104--to--the--extent--that--the
 18 process--or--portion--of--the--facility--is--not--subject--to--a
 19 permit--issued--by--the--department--of--health--or--board--of
 20 health;

21 {6}--The--applicant--shall--pay--all--expenses--required--to
 22 process--and--conduct--a--hearing--on--a--waiver--request--under
 23 subsection--(3)--. However,--any--payments--made--under--this
 24 subsection--shall--be--credited--toward--the--fee--paid--under
 25 75-20-215--to--the--extent--the--data--or--evidence--presented--at

the hearing or the decision of the board under subsection (3) can be used in making a certification decision under this chapter.

(7) The board may grant only one waiver under subsections (3) and (4) for each permanent loss of jobs as defined in subsection (3)(a).

Section 6. Section 75-20-1202, MCA, is amended to read:

75-20-1202. Definitions. As used in this part and 75-20-201 through 75-20-203, the following definitions apply:

(1) (a) "Nuclear facility" means each plant, unit, or other facility designed for, or capable of,

(i) generating 50 megawatts of electricity or more by means of nuclear fission;

(ii) converting, enriching, fabricating, or reprocessing uranium minerals or nuclear fuel; or

(iii) storing or disposing of radioactive wastes or materials from a nuclear facility;

(b) "nuclear facility" does not include any small-scale facility used solely for educational, research, or medical purposes not connected with the commercial generation of energy;

(2) "facility" as defined in 75-20-104(1)(2) is further defined to include any nuclear facility as defined

in subsection (1)(a) of this section.

Section 1. Section 85-1-205, MCA, is amended to read:

"85-1-205. Acquisition of water in Fort-Peck Reservoir federal reservoirs. (1) The department may acquire water OR WATER STORAGE by purchase option or agreement with the federal government from the Fort-Peck Reservoir any federal reservoir for the purpose of sale, rent, or distribution for industrial use AND OTHER USES. In such cases, the department is not required to construct any diversion or appropriation facilities or works, and it may sell, rent, or distribute such water at such rates and under such terms and conditions as it considers appropriate as are established under the provisions of 85-2-311 AS IT CONSIDERS APPROPRIATE, EXCEPT AS PROVIDED IN SUBSECTION (2).

(2) UNTIL A FINAL DECREE HAS BEEN ISSUED PURSUANT TO 85-2-234 CONCERNING THE WATERS IN A FEDERAL RESERVOIR, THE DEPARTMENT MAY SELL, RENT, OR DISTRIBUTE SUCH WATER ONLY AFTER A PERMIT HAS BEEN ISSUED TO AN APPLICANT FOR PURCHASE, RENT, OR DISTRIBUTION OF WATER IN ACCORDANCE WITH PART 3 OF THIS CHAPTER."

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

"85-2-311. Criteria for issuance of permit. (1) Except as provided in subsections (2) and (3) THROUGH (4), the department shall issue a permit if the applicant proves by substantial credible evidence that the following criteria

1 are met:

2 (1)(a) there are unappropriated waters in the source
3 of supply;

4 (1)(b) at times when the water can be put to the use
5 proposed by the applicant;

6 (1)(c) in the amount the applicant seeks to
7 appropriate; and

8 (1)(d) throughout the period during which the
9 applicant seeks to appropriate, the amount requested is
10 available;

11 (2)(a) the rights of a prior appropriator will not be
12 adversely affected;

13 (3)(a) the proposed means of diversion, construction,
14 and operation of the appropriation works are adequate;

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

16 (5)(a) the proposed use will not interfere
17 unreasonably with other planned uses or developments for
18 which a permit has been issued or for which water has been
19 reserved;

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

24 (7) except as provided in subsection (6), the
25 applicant proves by substantiated credible evidence the

1 criteria listed in subsections (1) through (5).

2 (1) the department may not issue a permit for an
3 appropriation of 5,000 10,000 or more acre-feet of water a
4 year or 7 15 or more cubic feet per second of water unless

5 (1) the department makes an affirmative finding that

6 (a) the criteria in subsection (1) are met;

7 (b) the applicant has proven by clear and convincing
8 evidence that the rights of a prior appropriator will not be
9 adversely affected; and

10 (c) the proposed appropriation is in the public
11 interest; and

12 (1) the legislature affirms the findings pursuant to
13 subsection (1)(c);

14 (2) in making such a finding, the department shall
15 consider

16 (a) existing demands on the state water supply as
17 well as projected demands such as reservations of water for
18 future beneficial purposes including municipal water
19 supplies, irrigation systems, and minimum streamflows for
20 the protection of existing water rights and aquatic life;

21 (b) the benefits to the applicant and the state;

22 (c) the economic feasibility of the project;

23 (d) the effects on the quantity, quality, and
24 quantity of water of existing beneficial uses in the
25 sources of supply;

~~1) the effects on private property rights by any creation of or contribution to saline seeps and~~

~~1) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to title 75, chapter 17, or title 75, chapter 28.~~

~~1) A permit for an appropriation FOR A DIVERSION FOR A CONSUMPTIVE USE of 5,000 to 10,000 or more acre-feet of water a year or 1 to 15 or more cubic feet per second of water under subsection (2) may not be issued unless the department petitions the legislature and the legislature affirms the findings of the department.~~

~~(2) THE DEPARTMENT MAY NOT ISSUE A PERMIT FOR AN APPROPRIATION OF 10,000 OR MORE ACRE-FEET OF WATER A YEAR OR 15 OR MORE CUBIC FEET PER SECOND OF WATER UNLESS THE APPLICANT HAS PROVEN BY CLEAR AND CONVINCING EVIDENCE THAT THE RIGHTS OF A PRIOR APPROPRIATOR WILL NOT BE ADVERSELY AFFECTED.~~

~~(2)(3) A PERMIT FOR AN APPROPRIATION OF 10,000 OR MORE ACRE-FEET OF WATER A YEAR OR 15 OR MORE CUBIC FEET PER SECOND OF WATER ON APPLICATIONS FILED WITH THE DEPARTMENT AFTER [THE EFFECTIVE DATE OF THIS ACT] MAY NOT BE ISSUED UNLESS THE DEPARTMENT PETITIONS THE LEGISLATURE AND THE LEGISLATURE AFFIRMS THE ISSUANCE BY THE DEPARTMENT.~~

~~(2)(4) An appropriation, diversion, impoundment,~~

~~restraint, or attempted appropriation, diversion, impoundment, or restraint contrary to the provisions of this section is null and void. No officer, agent, agency, or employee of the state may knowingly permit, aid, or assist in any manner such unauthorized appropriation, diversion, impoundment, or other restraint. No person or corporation may, directly or indirectly, personally or through an agent, officer, or employee, attempt to appropriate, divert, impound, or otherwise restrain or control any of the waters within the boundaries of this state except in accordance with this section."~~

~~NEW SECTION. Section 3. Repealer. Section 85-1-121, MCA, is repealed.~~

~~NEW SECTION. Section 4. Study of water marketing. (1) There is a select committee on water marketing. The select committee consists of eight members. The senate committee on committees and the speaker of the house of representatives shall each appoint four members on a bipartisan basis. The select committee shall meet as often as necessary to complete the study of water marketing required under this section.~~

~~(2) The select committee on water marketing shall undertake a study of the economic, tax, administrative, legal, social, and environmental advantages and disadvantages of water marketing.~~

(3) The select committee shall study the desirability and feasibility of in-state and out-of-state marketing of limited amounts of water for industrial purposes from existing state and federal reservoirs and from proposed reservoirs with water reservations.

(4) The study must include:

(a) the present and future in-state demands for water for domestic, municipal, agricultural, industrial, recreational, in-stream flows, and other beneficial uses;

(b) how best to encourage a negotiated resolution of the conflicting demands of water users within the Missouri River basin and to discourage litigation and congressional action initiated by lower basin states;

(c) the potential effects of a coal slurry pipeline on coal production and the economic and environmental effects of increased coal production;

(d) the effects of a coal slurry pipeline on the railroad industry and rail rates for noncoal shippers;

(e) alternative structures for a water marketing program;

(f) alternative uses of revenue derived from water marketing; and

(g) the potential ecological effects of the installation and operation of coal slurry pipelines.

(5) The select committee shall solicit the advice of

the department of natural resources and conservation, various interested industries, conservation groups, appropriate state and federal agencies, and the public in carrying out its duties under this section.

(6) The environmental quality council shall provide staff assistance to the select committee. The select committee may contract with experts and consultants, in addition to assistance from the environmental quality council staff, in carrying out its duties under this section.

(7) The select committee shall report its findings and recommendations for legislation, if any, to the 49th legislature.

~~NEW SECTION. Section 11. Appropriation. There is appropriated from the renewable resource development clearance fund account to the environmental quality council for the biennium ending June 30, 1985, \$80,000 for the study of water marketing by the select committee on water marketing required by section 10.~~

~~NEW SECTION. Section 5. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.~~

1 ~~NEW SECTION.~~ Section 6. Effective date. This act is
2 effective on passage and approval.
3 ~~SECTION 7. TERMINATION DATE. THIS ACT TERMINATES JULY~~
4 ~~1, 1985.~~

-end-

HOUSE BILL NO. 908

INTRODUCED BY HARPER, BARDANOUVE, IVERSON,

VINCENT, KEMMIS, ASAY, FABREGA

A BILL FOR AN ACT ENTITLED: "AN ACT ADDING CERTAIN PIPELINES TO THE DEFINITION OF "FACILITY" UNDER THE MONTANA WATER MARKETING ACT; PROHIBITING THE ISSUANCE OF PERMITS FOR CERTAIN AMOUNTS OF WATER WITHOUT LEGISLATIVE APPROVAL; PROVIDING FOR A STUDY BY A SELECT COMMITTEE OF WATER MARKETING, PROVIDING FOR THE AMENDMENT AND STUDY OF THE LAWS RELATED TO THE ACQUISITION, TRANSPORTATION, AND USE OF WATER; PROVIDING AN APPROPRIATION AMENDING SECTIONS 75-28-104, 75-28-216, 75-28-218, 75-28-303, 75-28-304, 75-29-1202, 85-1-205, AND 85-2-311, MCA; REPEALING SECTION 85-1-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE."

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

Section 1, Section 75-28-104, MCA, is amended to read:

75-28-104. Definitions. In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Addition thereto" means the installation of new machinery and equipment which would significantly change the conditions under which the facility is operated;

(2) "Application" means an application for a

certificate submitted in accordance with this chapter and the rules adopted hereunder;

(3) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion dams, transmission substations, storage ponds, reservoirs, and any other device or equipment associated with the production or delivery of the energy form or product produced by a facility, except that the term does not include a facility;

(4) "Board" means the board of natural resources and conservation provided for in 2-15-3302;

(5) "Board of health" means the board of health and environmental sciences provided for in 2-15-2104;

(6) "Certificate" means the certificate of environmental compatibility and public need issued by the board under this chapter that is required for the construction or operation of a facility;

(7) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

(b) the fracturing of underground formations by any

means if such activity is related to the possible future development of a gasification facility or a facility employing geothermal resources but does not include the gathering of geological data by boring or test holes or other underground exploratory or investigatory or experimentation

(c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or rights of way upon or over which a facility may be constructed;

(d) the relocation or upgrading of an existing facility defined by (b) or (c) of subsection (10) including upgrading to a design capacity covered by subsection (10)(b) except that the term does not include normal maintenance or repair of an existing facility;

(8) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33;

(9) "Department of health" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21;

(10) "Facility" means

(a) except for crude oil and natural gas refineries and facilities and associated facilities designed for or capable of producing, gathering, processing, transmitting, transporting or distributing crude oil or natural gas; and

those facilities subject to The Montana Strip and Underground Mine Reclamation Act; each plant, unit or other facility and associated facilities designed for or capable of

(i) generating 50 megawatts of electricity or more or any addition thereto (except pollution control facilities approved by the department of health and environmental sciences added to an existing plant) having an estimated cost in excess of \$10 million;

(ii) producing 25 million cubic feet or more of gas derived from coal per day or any addition thereto having an estimated cost in excess of \$10 million;

(iii) producing 25,000 barrels of liquid hydrocarbon products per day or more or any addition thereto having an estimated cost in excess of \$10 million;

(iv) enriching uranium minerals or any addition thereto having an estimated cost in excess of \$10 million; or

(v) utilizing or converting 500,000 tons of coal per year or more or any addition thereto having an estimated cost in excess of \$10 million;

(b) each electric transmission line and associated facilities of a design capacity of more than 69 kilowatts except that the term does not include an electric transmission line and associated facilities of a design capacity of 230 kilowatts or less and 10 miles or less in

1 length

2 ~~(c) each pipeline and associated facilities designed~~

3 ~~for or capable of transporting gas (except for natural gas),~~

4 ~~water, or liquid hydrocarbon products from or to a facility~~

5 ~~located within or without this state of the size indicated~~

6 ~~in subsection (10)(a) of this section;~~

7 ~~(d) each pipeline greater than 20 inches in diameter~~

8 ~~or 20 miles in length and associated facilities designed~~

9 ~~and intended for or capable of transporting water or using~~

10 ~~water as a transport medium;~~

11 ~~(d)(i) any use of geothermal resources, including the~~

12 ~~use of underground space in existence or to be created, for~~

13 ~~the creation, use, or conversion of energy, designed for or~~

14 ~~capable of producing geothermally derived power equivalent~~

15 ~~to 25 million Btu per hour or more or any addition thereto~~

16 ~~having an estimated cost in excess of \$750,000;~~

17 ~~(e) if any underground in situ gasification of coal;~~

18 ~~(11) "Person" means any individual, group, firm,~~

19 ~~partnership, corporation, cooperative, association,~~

20 ~~government subdivision, government agency, local government,~~

21 ~~or other organization or entity;~~

22 ~~(12) "Transmission substation" means any structure,~~

23 ~~device, or equipment, assembly, commonly located and~~

24 ~~designed for voltage regulation, circuit protection, or~~

25 ~~switching necessary for the construction or operation of a~~

1 proposed transmission line

2 ~~(13) "Utility" means any person engaged in any aspect~~

3 ~~of the production, storage, sale, delivery, or furnishing of~~

4 ~~heat, electricity, gas, hydrocarbon products, or energy in~~

5 ~~any form for ultimate public use."~~

6 ~~Section 2. Section 75-20-216, MCA, is amended to read:~~

7 ~~"75-20-216. Study, evaluation, and report on proposed~~

8 ~~facility--assistance by other agencies--(1) After receipt~~

9 ~~of an application, the department and department of health~~

10 ~~shall within 90 days notify the applicant in writing that:~~

11 ~~(a) the application is in compliance and is accepted~~

12 ~~as complete; or~~

13 ~~(b) the application is not in compliance and list the~~

14 ~~deficiencies therein; and upon correction of these~~

15 ~~deficiencies and resubmission by the applicant, the~~

16 ~~department and department of health shall within 30 days~~

17 ~~notify the applicant in writing that the application is in~~

18 ~~compliance and is accepted as complete.~~

19 ~~(2) Upon receipt of an application complying with~~

20 ~~75-20-211 through 75-20-215 and this section, the~~

21 ~~department shall commence an intensive study and evaluation~~

22 ~~of the proposed facility and its effects, considering all~~

23 ~~applicable criteria listed in 75-20-301 and 75-20-503 and~~

24 ~~the department of health shall commence a study to enable it~~

25 ~~or the board of health to issue a decision, opinion, or order~~

1 certification or permit as provided in subsection (3). The
2 department and department of health shall use to the extent
3 they consider applicable valid and useful existing studies
4 and reports submitted by the applicant or compiled by a
5 state or federal agency.

6 (3) The department of health shall within 1 year
7 following the date of acceptance of an application and the
8 board of health or department of health if applicable
9 within an additional 6 months issue any decision opinion
10 order certification or permit required under the laws
11 administered by the department of health or the board of
12 health and this chapter. The department of health and the
13 board of health shall determine compliance with all
14 standards permit requirements and implementation plans
15 under their jurisdiction for the primary and reasonable
16 alternate locations in their decision opinion order
17 certification or permits. The decision opinion order
18 certification or permits with or without conditions is
19 conclusive on all matters that the department of health and
20 board of health administer and any of the criteria
21 specified in subsections (2) through (7) of 75-20-503 that
22 are a part of the determinations made under the laws
23 administered by the department of health and the board of
24 health. Although the decision opinion order
25 certification or permit issued under this subsection is

1 conclusively the board retains authority to make the
2 determination required under 75-20-301(2)(c). The decision
3 opinion order certification or permit of the department
4 of health or the board of health satisfies the review
5 requirements by those agencies and shall be acceptable in
6 lieu of an environmental impact statement under the Montana
7 Environmental Policy Act. A copy of the decision opinion
8 order certification or permit shall be served upon the
9 department and the board and shall be utilized as part of
10 their final site selection process prior to the issuance of
11 a preliminary decision by the department of health and
12 pursuant to rules adopted by the board of health the
13 department of health shall provide an opportunity for public
14 review and comments.

15 (4) Within 22 months following acceptance of an
16 application for a facility as defined in (a) and (d) of
17 75-20-104(10) and for a facility as defined in (b) and (c)
18 through (d) of 75-20-104(10) which is more than 30 miles in
19 length and within 1 year for a facility as defined in (b)
20 and (c) through (d) of 75-20-104(10) which is 30 miles or
21 less in length the department shall make a report to the
22 board which shall contain the department's studies
23 evaluations recommendations other pertinent documents
24 resulting from its study and evaluation and an
25 environmental impact statement or analysis prepared pursuant

1 to the Montana Environmental Policy Act, if any. If the
2 application is for a combination of two or more facilities,
3 the department shall make its report to the board within the
4 greater of the lengths of time provided for in this
5 subsection for either of the facilities.

6 (5) The departments of highways, commerce, fish,
7 wildlife and parks, state lands, revenues and public
8 service regulation shall report to the department
9 information relating to the impact of the proposed site on
10 each department's area of expertise. The report may include
11 opinions as to the advisability of granting, denying or
12 modifying the certificates. The department shall allocate
13 funds obtained from filing fees to the departments making
14 reports to reimburse them for the costs of compiling
15 information and issuing the required reports.

16 Section 3, Section 75-20-218, MCA, is amended to read:
17 "75-20-218. Hearing date and location. The department shall
18 act as staff. Hearings to be held jointly. (1) Upon
19 receipt of the department's report submitted under
20 75-20-216, the board shall set a date for a hearing to begin
21 not more than 120 days after the receipt, except for those
22 hearings involving applications submitted for facilities as
23 defined in (b) and (c) of 75-20-304(10), certification
24 certification hearings shall be conducted by the board in
25 the county seat of Lewis and Clark County or the county in

1 which the facility or the greater portion thereof is to be
2 located.

3 (2) Except as provided in 75-20-221(2), the department
4 shall act as the staff for the board throughout the
5 decisionmaking process and the board may request the
6 department to present testimony or cross-examine witnesses
7 as the board considers necessary and appropriate.

8 (3) At the request of the applicant, the department of
9 health and the board of health shall hold any required
10 permit hearings required under laws administered by those
11 agencies in conjunction with the board certification
12 hearings. In such a conjunctive hearing, the time periods
13 established for reviewing an application and for issuing a
14 decision on certification of a proposed facility under this
15 chapter supersede the time periods specified in other laws
16 administered by the department of health and the board of
17 health.

18 Section 4, Section 75-20-303, MCA, is amended to read:
19 "75-20-303. Opinion issued with decision. Contents.

20 (1) In rendering a decision on an application for a
21 certificate, the board shall issue an opinion stating its
22 reasons for the action taken.

23 (2) If the board has found that any regional or local
24 law or regulation which would be otherwise applicable is
25 unreasonably restrictive pursuant to 75-20-301(2)(f), it

1 shall state in its opinion the reasons therefor.

2 (3) Any certificate issued by the board shall include

3 the following:

4 (a) an environmental evaluation statement related to

5 the facility being certified. The statement shall include

6 but not be limited to analysis of the following information:

7 (i) the environmental impact of the proposed facility;

8 (ii) any adverse environmental effects which cannot be

9 avoided by issuance of the certificate;

10 (iii) problems and objections raised by other federal

11 and state agencies and interested groups;

12 (iv) alternatives to the proposed facility;

13 (v) a plan for monitoring environmental effects of the

14 proposed facility; and

15 (vi) a time limit as provided in subsection (4) during

16 which construction of the facility must be completed;

17 (b) a statement signed by the applicant showing

18 agreement to comply with the requirements of this chapter

19 and the conditions of the certificate;

20 (4) The board shall issue as part of the certificate

21 the following time limits during which construction of a

22 facility must be completed:

23 (a) For a facility as defined in (b) 1, (b) 2, or (c) 1d

24 of 75-20-104(7) 1101 that is more than 30 miles in length,

25 the time limit is 10 years.

1 (b) For a facility as defined in (b) 1, (b) 2, or (c) 1a

2 of 75-20-104(7) 1101 that is 30 miles or less in length, the

3 time limit is 5 years.

4 (c) The time limit shall be extended for periods of 2

5 years each upon a showing by the applicant to the board that

6 a good faith effort is being undertaken to complete

7 construction. Under this subsection, a good faith effort to

8 complete construction includes the process of acquiring any

9 necessary state or federal permit or certificate for the

10 facility and the process of judicial review of any such

11 permit or certificate.

12 (5) The provisions of subsection (4) apply to any

13 facility for which a certificate has not been issued or for

14 which construction is yet to be commenced."

15 Section 5. Section 75-20-304, MCA, is amended to read

16 "75-20-304. Waiver of provisions of certification

17 proceedings. (1) The board may waive compliance with any of

18 the provisions of 75-20-216 through 75-20-222, 75-20-501,

19 and this part if the applicant makes a clear and convincing

20 showing to the board at a public hearing that an immediate

21 urgent need for a facility exists and that the applicant did

22 not have knowledge that the need for the facility existed

23 sufficiently in advance to fully comply with the provisions

24 of 75-20-216 through 75-20-222, 75-20-501, and this part.

25 (2) The board may waive compliance with any of the

provisions of this chapter upon receipt of notice by a utility or person subject to this chapter that a facility or associated facility has been damaged or destroyed as a result of fire, flood, or other natural disaster or as the result of insurrection, war, or other civil disorder and there exists an immediate need for construction of a new facility or associated facility or the relocation of a previously existing facility or associated facility in order to promote the public welfare.

(3) The board shall waive compliance with the requirements of subsections (2)(c), (3)(b), and (3)(c) of 75-20-301 and 75-20-501(5) and the requirements of subsections (1)(a)(iv) and (v) of 75-20-211, 75-20-216(3), and 75-20-303(3)(a)(iv) relating to consideration of alternative sites if the applicant makes a clear and convincing showing to the board at a public hearing that:

(i) a proposed facility will be constructed in a county where a single employer within the county has permanently curtailed or ceased operations causing a loss of 25 or more permanent jobs within 2 years at the employer's operations within the preceding 10-year period;

(ii) the county and municipal governing bodies in whose jurisdiction the facility is proposed to be located support any resolution such a waiver;

(c) the proposed facility will be constructed within a

15-mile radius of the operations that have ceased or been curtailed; and

(d) the proposed facility will have a beneficial effect on the economy of the county in which the facility is proposed to be located;

(4) The waiver provided for in subsection (3) applies only to permanent job losses by a single employer. The waiver provided for in subsection (3) does not apply to jobs of a temporary or seasonal nature, including but not limited to construction jobs or job losses during labor disputes.

(5) The waiver provided for in subsection (3) does not apply to consideration of alternatives or minimum adverse environmental impact for a facility defined in subsections (10)(b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), (r), (s), (t), (u), (v), (w), (x), (y), (z) of 75-20-104, for an associated facility defined in subsection (3) of 75-20-104, or for any portion of or process in a facility defined in subsection (10)(a) of 75-20-104 to the extent that the process or portion of the facility is not subject to a permit issued by the department of health or board of health.

(6) The applicant shall pay all expenses required to process and conduct a hearing on a waiver request under subsection (3). However, any payments made under this subsection shall be credited toward the fee paid under 75-20-215 to the extent the data or evidence presented at

1 the hearing or the decision of the board under subsection
2 (3) can be used in making a certification decision under
3 this chapter.

4 (7) The board may grant only one waiver under
5 subsections (3) and (4) for each permanent loss of jobs as
6 defined in subsection (3)(a).

7 Section 6, Section 75-20-1202, MCA, is amended to
8 read:

9 "75-20-1202. Definitions. As used in this part and
10 75-20-201 through 75-20-203, the following definitions
11 apply:

12 (1) (a) "Nuclear facility" means each plant, unit, or
13 other facility designed for or capable of:

14 (i) generating 50 megawatts of electricity or more by
15 means of nuclear fission;

16 (ii) converting, enriching, fabricating, or
17 reprocessing uranium minerals or nuclear fuels; or

18 (iii) storing or disposing of radioactive wastes or
19 materials from a nuclear facility;

20 (b) "nuclear facility" does not include any
21 small-scale facility used solely for educational, research,
22 or medical purposes not connected with the commercial
23 generation of energy.

24 (2) "Facility" as defined in 75-20-104(7)(i) is
25 further defined to include any nuclear facility as defined

1 in subsection (1)(a) of this section."

2 Section 1. Section 85-1-205, MCA, is amended to read:

3 "85-1-205. Acquisition of water in Fort Peck Reservoir
4 federal reservoirs. (1) The department may acquire water OR
5 WATER STORAGE by purchase option or agreement with the
6 federal government from the Fort Peck Reservoir any federal
7 reservoir for the purpose of sale, rent, or distribution for
8 industrial use AND OTHER USES. In such cases, the department
9 is not required to construct any diversion or appropriation
10 facilities or works, and it may sell, rent, or distribute
11 such water at such rates and under such terms and conditions
12 as it considers appropriate as are established under the
13 provisions of 85-2-311 AS IT CONSIDERS APPROPRIATE, EXCEPT
14 AS PROVIDED IN SUBSECTION (2).

15 (2) UNTIL A FINAL DECREE HAS BEEN ISSUED PURSUANT TO
16 85-2-234 CONCERNING THE WATERS IN A FEDERAL RESERVOIR, THE
17 DEPARTMENT MAY SELL, RENT, OR DISTRIBUTE SUCH WATER ONLY
18 AFTER A PERMIT HAS BEEN ISSUED TO AN APPLICANT FOR PURCHASE,
19 RENT, OR DISTRIBUTION OF WATER IN ACCORDANCE WITH PART 3 OF
20 THIS CHAPTER."

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

22 "85-2-311. Criteria for issuance of permit. The (1)
23 Except as provided in subsections (2) and (3) THROUGH (4) AND
24 (3), the department shall issue a permit if the applicant
25 proves by substantial credible evidence that the following

1 criteria are met:

2 ~~(1)(a)~~ there are unappropriated waters in the source
3 of supply;

4 ~~(1)(i)~~ at times when the water can be put to the use
5 proposed by the applicant;

6 ~~(1)(ii)~~ in the amount the applicant seeks to
7 appropriate; and

8 ~~(1)(iii)~~ throughout the period during which the
9 applicant seeks to appropriate, the amount requested is
10 available;

11 ~~(2)(b)~~ the rights of a prior appropriator will not be
12 adversely affected;

13 ~~(3)(c)~~ the proposed means of diversion, construction,
14 and operation of the appropriation works are adequate;

15 ~~(4)(d)~~ the proposed use of water is a beneficial use;

16 ~~(5)(e)~~ the proposed use will not interfere
17 unreasonably with other planned uses or developments for
18 which a permit has been issued or for which water has been
19 reserved;

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

24 ~~(7)---except---as---provided---in---subsection---(4)---the~~
25 ~~applicant-proves-by-substantial-credible-evidence---the~~

1 ~~criteria-listed-in-subsections-(1)-through-(5).~~

2 ~~(1)---(a)---the---department---may---not---issue---a---permit---for---an~~
3 ~~appropriation-of-5,000-10,000-or-more-acre-feet-of-water---a~~
4 ~~year---or-15-or-more-cubic-feet-per-second-of-water-unless~~

5 ~~(i)---the---department---makes---an---affirmative-finding---that~~
6 ~~(1)---the---criteria---in---subsection---(1)---are---met~~
7 ~~(1)---the---applicant---has---proven---by---clear---and---convincing~~
8 ~~evidence---that---the---rights---of---a---prior---appropriator---will---not---be~~
9 ~~adversely-affected;---and~~

10 ~~(1)---the---proposed---appropriation---is---in---the---public~~
11 ~~interests---and~~

12 ~~(ii)---the---legislature---affirms---the---findings---pursuant---to~~
13 ~~subsection---(2)(c);~~

14 ~~(b)---in---making---such---a---finding---the---department---shall~~
15 ~~consider~~

16 ~~(i)---existing---demands---on---the---state---water---supply---as~~
17 ~~well---as---projected---demands---such---as---reservations-of-water---for~~
18 ~~future---beneficial---purposes---including---municipal---water~~
19 ~~supply---irrigation---systems---and---minimum---streamflows---for~~
20 ~~the---protection---of---existing---water---rights---and---aquatic---life;~~

21 ~~(ii)---the---benefits---to---the---applicant---and---the---state;~~

22 ~~(iii)---the---economic---feasibility---of---the---project;~~

23 ~~(iv)---the---effects---on---the---quantity---quality---and~~
24 ~~stability-of-water---of---existing---beneficial---uses---in---the~~
25 ~~source-of-supply;~~

1 ~~iv) the effects on private property rights by any~~
 2 ~~creation of or contribution to saline seeps and~~
 3 ~~iv) the probable significant adverse environmental~~
 4 ~~impacts of the proposed use of water as determined by the~~
 5 ~~department pursuant to title 75, chapter 1, or title 75,~~
 6 ~~chapter 20.~~

7 ~~ic) a permit for an appropriation for a diversion for~~
 8 ~~a consumptive use of 5,000 to 10,000 or more acre-feet of water~~
 9 ~~a year or 15 or more cubic feet per second of water under~~
 10 ~~subsection (2) may not be issued unless the department~~
 11 ~~petition the legislature and the legislature affirms the~~
 12 ~~findings of the department.~~

13 ~~(2) the department may not issue a permit for an~~
 14 ~~appropriation of 10,000 or more acre-feet of water a year or~~
 15 ~~15 or more cubic feet per second of water unless the~~
 16 ~~applicant has proven by clear and convincing evidence that~~
 17 ~~the rights of a prior appropriator will not be adversely~~
 18 ~~affected.~~

19 ~~(2)(3) a permit for an appropriation of 10,000 or more~~
 20 ~~acre-feet of water a year or 15 or more cubic feet per~~
 21 ~~second of water on applications filed with the department~~
 22 ~~after the effective date of this act may not be issued~~
 23 ~~unless the department petitions the legislature and the~~
 24 ~~legislature affirms the issuance by the department.~~

25 ~~(2) (A) THE DEPARTMENT MAY NOT ISSUE A PERMIT FOR AN~~

1 ~~APPROPRIATION OF 10,000 OR MORE ACRE-FEET OF WATER A YEAR OR~~
 2 ~~15 OR MORE CUBIC FEET PER SECOND OF WATER UNLESS IT~~
 3 ~~AFFIRMATIVELY FINDS:~~

4 ~~(I) THE CRITERIA IN SUBSECTION (1) ARE MET;~~

5 ~~(II) THE APPLICANT HAS PROVEN BY CLEAR AND CONVINCING~~
 6 ~~EVIDENCE THAT THE RIGHTS OF A PRIOR APPROPRIATOR WILL NOT BE~~
 7 ~~ADVERSELY AFFECTED;~~

8 ~~(III) THE PROPOSED APPROPRIATION IS A REASONABLE USE.~~
 9 ~~SUCH A FINDING SHALL BE BASED ON A CONSIDERATION OF THE~~
 10 ~~FOLLOWING:~~

11 ~~(A) THE EXISTING DEMANDS ON THE STATE WATER SUPPLY, AS~~
 12 ~~WELL AS PROJECTED DEMANDS SUCH AS RESERVATIONS OF WATER FOR~~
 13 ~~FUTURE BENEFICIAL PURPOSES, INCLUDING MUNICIPAL WATER~~
 14 ~~SUPPLIES, IRRIGATION SYSTEMS, AND MINIMUM STREAMFLOWS FOR~~
 15 ~~THE PROTECTION OF EXISTING WATER RIGHTS AND AQUATIC LIFE;~~

16 ~~(B) THE BENEFITS TO THE APPLICANT AND THE STATE;~~

17 ~~(C) THE ECONOMIC FEASIBILITY OF THE PROJECT;~~

18 ~~(D) THE EFFECTS ON THE QUANTITY, QUALITY, AND~~
 19 ~~POTABILITY OF WATER FOR EXISTING BENEFICIAL USES IN THE~~
 20 ~~SOURCE OF SUPPLY;~~

21 ~~(E) THE EFFECTS ON PRIVATE PROPERTY RIGHTS BY ANY~~
 22 ~~CREATION OF OR CONTRIBUTION TO SALINE SEEP; AND~~

23 ~~(F) THE PROBABLE SIGNIFICANT ADVERSE ENVIRONMENTAL~~
 24 ~~IMPACTS OF THE PROPOSED USE OF WATER AS DETERMINED BY THE~~
 25 ~~DEPARTMENT PURSUANT TO TITLE 75, CHAPTER 1, OR TITLE 75.~~

1 CHAPTER 20.

2 ~~(B) A PERMIT FOR AN APPROPRIATION FOR A DIVERSION FOR~~
 3 ~~A CONSUMPTIVE USE OF 10,000 OR MORE ACRE-FEET OF WATER A~~
 4 ~~YEAR OR 15 OR MORE CUBIC FEET PER SECOND OF WATER UNDER THIS~~
 5 ~~SUBSECTION MAY NOT BE ISSUED UNLESS THE DEPARTMENT PETITIONS~~
 6 ~~THE LEGISLATURE AND THE LEGISLATURE AFFIRMS THE FINDINGS OF~~
 7 ~~THE DEPARTMENT.~~

8 ~~+++++(3) An appropriation, diversion, impoundment,~~
 9 ~~restraints, or attempted appropriation, diversion,~~
 10 ~~impoundment, or restraint contrary to the provisions of this~~
 11 ~~section is null and void. No officers, agents, agency, or~~
 12 ~~employee of the state may knowingly permit, aid, or assist~~
 13 ~~in any manner such unauthorized appropriation, diversion,~~
 14 ~~impoundment, or other restraint. No person or corporation~~
 15 ~~may, directly or indirectly, personally or through an agent,~~
 16 ~~officer, or employee, attempt to appropriate, divert,~~
 17 ~~impound, or otherwise restrain or control any-of-the waters~~
 18 ~~within the boundaries of this state except in accordance~~
 19 ~~with this section."~~

20 ~~NEW SECTION. Section 3. Repealer. Section 85-1-121,~~
 21 ~~MCA, is repealed.~~

22 ~~NEW SECTION. Section 4. Study of water marketing. (1)~~
 23 ~~There is a select committee on water marketing. The select~~
 24 ~~committee consists of eight members. The senate committee on~~
 25 ~~committees and the speaker of the house of representatives~~

1 shall each appoint four members on a bipartisan basis. The
 2 select committee shall meet as often as necessary to
 3 complete the study of water marketing required under this
 4 section.

5 (2) The select committee on water marketing shall
 6 undertake a study of the economic, tax, administrative,
 7 legal, social, and environmental advantages and
 8 disadvantages of water marketing.

9 (3) The select committee shall study the desirability
 10 and feasibility of in-state and out-of-state marketing of
 11 limited amounts of water for industrial purposes from
 12 existing state and federal reservoirs and from proposed
 13 reservoirs with water reservations.

14 (4) The study must include:

15 (a) the present and future in-state demands for water
 16 for domestic, municipal, agricultural, industrial,
 17 recreational, in-stream flows, and other beneficial uses;

18 (b) how best to encourage a negotiated resolution of
 19 the conflicting demands of water users within the Missouri
 20 River basin and to discourage litigation and congressional
 21 action initiated by lower basin states;

22 (c) the potential effects of a coal slurry pipeline on
 23 coal production and the economic and environmental effects
 24 of increased coal production;

25 (d) the effects of a coal slurry pipeline on the

1 railroad industry and rail rates for noncoal shippers;
 2 (e) alternative structures for a water marketing
 3 program;
 4 (f) alternative uses of revenue derived from water
 5 marketing; and
 6 (g) the potential ecological effects of the
 7 installation and operation of coal slurry pipelines.
 8 (5) The select committee shall solicit the advice of
 9 the department of natural resources and conservation,
 10 various interested industries, conservation groups,
 11 appropriate state and federal agencies, and the public in
 12 carrying out its duties under this section.
 13 (6) The environmental quality council shall provide
 14 staff assistance to the select committee. The select
 15 committee may contract with experts and consultants, in
 16 addition to assistance from the environmental quality
 17 council staff, in carrying out its duties under this
 18 section.
 19 (7) The select committee shall report its findings and
 20 recommendations for legislation, if any, to the 49th
 21 legislature.
 22 ~~NEW SECTION. Section 11. Appropriation. There is~~
 23 ~~appropriated from the renewable resource development~~
 24 ~~clearance fund account to the environmental quality council~~
 25 ~~for the biennium ending June 30, 1985, \$60,000 for the study~~

1 ~~of water marketing by the select committee on water~~
 2 ~~marketing required by section 10.~~
 3 NEW SECTION. Section 5. Severability. If a part of
 4 this act is invalid, all valid parts that are severable from
 5 the invalid part remain in effect. If a part of this act is
 6 invalid in one or more of its applications, the part remains
 7 in effect in all valid applications that are severable from
 8 the invalid applications.
 9 NEW SECTION. Section 6. Effective date. This act is
 10 effective on passage and approval.
 11 SECTION 7. TERMINATION DATE. THIS ACT TERMINATES JULY
 12 1, 1985.

-End-