

SENATE BILL NO. 370

INTRODUCED BY ETCHART, GALT, LANE,  
OCHSNER, ASAY, MANUEL, SPAETH

BY REQUEST OF THE DEPARTMENT OF NATURAL  
RESOURCES AND CONSERVATION

IN THE SENATE

February 5, 1983	Introduced and referred to Committee on Agriculture, Livestock and Irrigation.
February 7, 1983	Fiscal Note requested.
February 11, 1983	Fiscal Note returned.
February 18, 1983	Committee recommend bill do pass as amended. Report adopted.
	Statement of Intent attached.
February 19, 1983	Bill printed and placed on members' desks.
February 21, 1983	Second reading, do pass.
February 22, 1983	Correctly engrossed.
February 23, 1983	Third reading, passed. Ayes, 49; Noes, 0. Transmitted to House.

IN THE HOUSE

February 28, 1983	Introduced and referred to Committee on Natural Resources.
March 19, 1983	Committee recommend bill be concurrent in as amended. Report adopted.
March 22, 1983	Second reading, concurred in.
March 23, 1983	Third reading, concurred in.

IN THE SENATE

March 24, 1983

Returned to Senate with  
amendments.

March 30, 1983

Second reading, amendments  
concurred in.

March 31, 1983

Third reading, amendments  
concurred in.

Sent to enrolling.

Reported correctly enrolled.

1 *Spate* BILL NO. *370*  
 2 INTRODUCED BY *Edmund Galt LAKE*  
 3 BY REQUEST OF THE DEPARTMENT OF NATURAL *Spate*  
 4 RESOURCES AND CONSERVATION  
 5

6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND  
 7 CLARIFY CERTAIN LAWS RELATING TO SURFACE AND GROUND WATER;  
 8 AMENDING SECTIONS 85-2-112, 85-2-113, 85-2-123, 85-2-124,  
 9 85-2-236, 85-2-302, 85-2-303, 85-2-306 THROUGH 85-2-308,  
 10 85-2-311, 85-2-312, 85-2-314, 85-2-315, 85-2-402, AND  
 11 85-2-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."  
 12

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

14 Section 1. Section 85-2-112, MCA, is amended to read:

15 "85-2-112. Department duties. The department shall:

16 (1) enforce and administer this chapter and rules  
 17 adopted by the board under 85-2-113, subject to the powers  
 18 and duties of the supreme court under 3-7-204;

19 (2) prescribe procedures, forms, and requirements for  
 20 applications, permits, certificates, ~~declarations~~, claims of  
 21 existing rights, and proceedings under this chapter and  
 22 prescribe the information to be contained in any  
 23 application, ~~declaration~~, claim of existing right, or other  
 24 document to be filed with the department under this chapter  
 25 not inconsistent with the requirements of this chapter;

1 (3) establish and keep in its Helena office a  
 2 centralized record system of all existing rights and a  
 3 public record of permits, certificates, ~~declarations~~, claims  
 4 of existing rights, applications, and other documents filed  
 5 in its office under this chapter;

6 (4) cooperate with, assist, advise, and coordinate  
 7 plans and activities with the federal, state, and local  
 8 agencies in matters relating to this chapter;

9 (5) upon request by any person, cooperate with,  
 10 assist, and advise that person in matters pertaining to  
 11 measuring water or filing ~~declarations with the department~~  
 12 or claims of existing rights with a district court under  
 13 this chapter;

14 ~~(6) adopt rules necessary to reject, modify, or~~  
 15 ~~condition permit applications in highly appropriated basins~~  
 16 ~~or subbasins as provided in [section 17]."~~

17 Section 2. Section 85-2-113, MCA, is amended to read:

18 "85-2-113. Board powers and duties. (1) The board may  
 19 prescribe fees or service charges for any public service  
 20 rendered by the department under this chapter, including ~~but~~  
 21 ~~not limited to~~ fees for the filing of applications or for  
 22 the issuance of permits and certificates, ~~for rulemaking~~  
 23 ~~hearings under [section 17], for administrative hearings~~  
 24 ~~conducted under this chapter, for investigations concerning~~  
 25 ~~permit revocation, for field verification of issued and~~

~~completed permits, and all change approvals.~~ There shall be no fees for ~~the--fitting-of-declarations-or-~~for any action taken by the department at the request of the water judge or ~~for-the-issuance-of-certificates-of-existing-rights.~~

(2) The board may adopt rules necessary to implement and carry out the purposes and provisions of this chapter. These rules may include but are not limited to rules to:

(a) govern the issuance and terms of interim permits authorizing an applicant for a regular permit under this chapter to begin appropriating water immediately, pending final approval or denial by the department of the application for a regular permit;

(b) require the owner or operator of appropriation facilities to install and maintain suitable controlling and measuring devices, except that the board may not require a meter on a water well outside of a controlled groundwater area or proposed controlled groundwater area unless the maximum ~~yield~~ appropriation of the well is in excess of 100 gallons a minute;

(c) require the owner or operator of appropriation facilities to report to the department the readings of measuring devices at reasonable intervals and to file reports on appropriations; and

(d) regulate the construction, use, and sealing of wells to prevent the waste, contamination, or pollution of

groundwater.

(3) The board shall adopt rules providing for and governing temporary emergency appropriations, without prior application for a permit, necessary to protect lives or property."

Section 3. Section 85-2-123, MCA, is amended to read:

"85-2-123. Deposit of fees and penalties. Except as provided in 85-2-124, all fees and penalties collected under this chapter shall be deposited in the ~~state--general--fund~~ water right appropriation account established in 85-2-318. All penalties or fines imposed by any court for a violation of this chapter shall be deposited in the general fund of the county where the court presides and shall be disposed of in the same manner as any other penalty or fine."

Section 4. Section 85-2-124, MCA, is amended to read:

"85-2-124. Fees for environmental impact statements. (1) Whenever the department determines that the filing of an application (or a combination of applications) for a permit or approval under this chapter requires the preparation of an environmental impact statement as prescribed by the Montana Environmental Policy Act and the application (or combination of applications) involves the use of 10,000 or more acre-feet per year or 15 or more cubic feet per second of water, the applicant shall pay to the department the fee prescribed in this section. The department shall notify the

1 applicant in writing within 30 20 days of receipt of a  
2 correct and complete application (or a combination of  
3 applications) if it determines that an environmental impact  
4 statement and fee is required.

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

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

1 applicant for:

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

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

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

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

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

1 department pursuant to that act.

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

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

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

14 Section 5. Section 85-2-236, MCA, is amended to read:

15 "85-2-236. Certificate of water right. ~~(1)~~ When a  
16 final decree is entered, the water judge shall send a copy  
17 to the department. The department shall on the basis of the  
18 final decree issue a certificate of water right to each  
19 person decreed an existing right. The original of the  
20 certificate shall be sent to the county-clerk-and-recorder  
21 of-the-county-where-the-point-of-diversion-or-place-of-use  
22 is-located-for-recordation ~~person to whom the right is~~  
23 ~~decreed.~~ The department shall keep a copy of the certificate  
24 in its office in Helena. After-recordation--the--clerk--and  
25 recorder--shall--send--the-certificate-to-the-person-to-whom

1 ~~the-right-is-decreed.~~

2 ~~(2) The department shall provide to the county clerk~~  
3 ~~and recorder of the county wherein the point of diversion or~~  
4 ~~place of use is located quarterly reports and an annual~~  
5 ~~summary report of all certificates of water right issued by~~  
6 ~~the department within the county."~~

7 Section 6. Section 85-2-302, MCA, is amended to read:

8 "85-2-302. Application for permit. Except as otherwise  
9 provided in ~~(1) and (2)~~ through (3) of 85-2-306, a person  
10 may not appropriate water or commence construction of  
11 diversion, impoundment, withdrawal, or distribution works  
12 therefor except by applying for and receiving a permit from  
13 the department. The application shall be made on a form  
14 prescribed by the department. The department shall make the  
15 forms available through its offices and the offices of the  
16 county clerk and recorders. The department shall return a  
17 defective application for correction or completion together  
18 with the reasons for returning it. An application does not  
19 lose priority of filing because of defects, if the  
20 application is corrected, completed, and refiled with the  
21 department within 30 days after its return to the applicant  
22 or within a further time as the department may allow. If an  
23 application is not corrected and completed within 30 days or  
24 within a further time as the department allows, up to ~~18~~ 3  
25 months, the priority date of the application shall be the

1 date of refiling the application with the corrections with  
2 the department. An application not corrected within ~~10~~ 3  
3 months shall be terminated."

4 Section 7. Section 85-2-303, MCA, is amended to read:

5 "85-2-303. Permit for conversion of nonproductive oil  
6 or gas well. A person who desires to convert a nonproductive  
7 oil or gas well to a water well ~~may do so immediately but~~  
8 shall file a notice of completion or apply for a permit,  
9 depending on the maximum ~~yield~~ appropriation of the well, as  
10 otherwise provided in this chapter. The date of  
11 appropriation shall be the date of filing the notice of  
12 completion or the application for a permit."

13 Section 8. Section 85-2-306, MCA, is amended to read:

14 "85-2-306. Exceptions to permit requirements. (1)  
15 Outside the boundaries of a controlled groundwater area, a  
16 permit is not required before appropriating groundwater by  
17 means of a well or developed spring with a maximum  
18 appropriation of less than 100 gallons per minute. Within 60  
19 days of completion of the well or developed spring and  
20 appropriation of the groundwater for beneficial use, the  
21 appropriator shall file a notice of completion with the  
22 department on a form provided by the department at its  
23 offices and at the offices of the county clerk and  
24 recorders. Upon receipt of the notice, the department shall  
25 review the notice and may, before issuing a certificate of

1 water right, return a defective notice for correction or  
2 completion, together with the reasons for returning it. A  
3 notice does not lose priority of filing because of defects,  
4 if the notice is corrected, completed, and refiled with the  
5 department within 30 days or within a further time as the  
6 department may allow, not to exceed 6 months. If a notice is  
7 not corrected and completed within the time allowed, the  
8 priority date of appropriation shall be the date of refiling  
9 a correct and complete notice with the department. A  
10 certificate of water right may not be issued until a correct  
11 and complete notice has been filed with the department. The  
12 original of the certificate shall be sent to the county  
13 clerk and recorder in the county where the point of  
14 diversion or place of use is located for recordation. The  
15 department shall keep a copy of the certificate in its  
16 office in Helena. After recordation, the clerk and recorder  
17 shall send the certificate to the appropriator. The date of  
18 filing of the notice of completion is the date of priority  
19 of the right.

20 (2) An appropriator of groundwater by means of a well  
21 or developed spring, first put to beneficial use between  
22 January 1, 1962, and July 1, 1973, who did not file a notice  
23 of completion, as required by laws in force prior to April  
24 14, 1981, with the county clerk and recorder shall file a  
25 notice of completion, as provided in subsection (1) of this

1 section, with the department to perfect the water right. ~~The~~  
 2 ~~filing of a claim of existing water right pursuant to~~  
 3 ~~85-2-221 is sufficient notice of completion under this~~  
 4 ~~subsection.~~ The priority date of the appropriation shall be  
 5 the date of the filing of a notice as provided in subsection  
 6 (1) of this section ~~or the date of the filing of the claim~~  
 7 ~~of existing water right.~~ An appropriation under this  
 8 subsection is an existing right, and a permit is not  
 9 required; however, the department shall acknowledge the  
 10 receipt of a correct and complete filing of a notice of  
 11 completion, except that for an appropriation of less than  
 12 100 gallons per minute, the department shall issue a  
 13 certificate of water right.

14 (3) A permit is not required before constructing an  
 15 impoundment or pit and appropriating water for use by  
 16 livestock. If the maximum capacity of the impoundment or pit  
 17 is less than 15 acre-feet and the appropriation is ~~less than~~  
 18 ~~20 acre-feet per year and is~~ from a source other than a  
 19 perennial flowing stream, and the impoundment or pit is to  
 20 be constructed on and will be accessible to a parcel of land  
 21 that is owned or under the control of the applicant and that  
 22 is 40 acres or larger. As used in this subsection, a  
 23 perennial flowing stream means a stream which historically  
 24 has flowed continuously at all seasons of the year, during  
 25 dry as well as wet years. However, within 60 days after

1 constructing the impoundment or pit, the appropriator shall  
 2 apply for a permit as prescribed by this part. Upon receipt  
 3 of a correct and complete application for a stockwater  
 4 provisional permit, the department shall then automatically  
 5 issue a provisional permit. If the department determines  
 6 after a hearing that the rights of other appropriators have  
 7 been or will be adversely affected, it may revoke the permit  
 8 or require the permittee to modify the impoundment or pit  
 9 and may then make the permit subject to such terms,  
 10 conditions, restrictions, or limitations it considers  
 11 necessary to protect the rights of other appropriators.

12 (4) A person may also appropriate water without  
 13 applying for or prior to receiving a permit under rules  
 14 adopted by the board under 85-2-113."

15 Section 9. Section 85-2-307, MCA, is amended to read:

16 "85-2-307. Notice of application. (1) Upon receipt of  
 17 a proper application for a permit, the department shall  
 18 prepare a notice containing the facts pertinent to the  
 19 application and shall publish the notice in a newspaper of  
 20 general circulation in the area of the source once a week  
 21 for 3 2 consecutive weeks. Before the last date of  
 22 publication, the department shall also serve the notice by  
 23 first-class mail upon an appropriator of water or applicant  
 24 for or holder of a permit who, according to the records of  
 25 the department, may be affected by the proposed



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

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

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

19 Section 10. Section 85-2-308, MCA, is amended to read:

20 "85-2-308. Objections. (1) An objection to an  
21 application must be filed by the date specified by the  
22 department under 85-2-307(2).

23 (2) The objection must state the name and address of  
24 the objector and facts tending to show that there are no  
25 unappropriated waters in the proposed source, that the

1 proposed means of appropriation are inadequate, that the  
2 property, ~~water~~ rights, or interests of the objector would  
3 be adversely affected by the proposed appropriation, ~~or the~~  
4 ~~objector may state any other objections to the proposed~~  
5 ~~appropriation he considers pertinent that the proposed use~~  
6 ~~of water is not a beneficial use, or that the proposed use~~  
7 ~~will interfere unreasonably with other planned uses or~~  
8 ~~developments for which a permit has been issued or for which~~  
9 ~~water has been reserved."~~

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

11 "85-2-311. Criteria for issuance of permit. The  
12 department shall issue a permit if:

13 (1) there are unappropriated waters in the source of  
14 supply:

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

17 (b) in the amount the applicant seeks to appropriate;  
18 and

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

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

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

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

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

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

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

11 Section 12. Section 85-2-312, MCA, is amended to read:

12 "85-2-312. Terms of permit. (1) The department may  
13 issue a permit for less than the amount of water requested,  
14 but in no case may it issue a permit for more water than is  
15 requested or than can be beneficially used without waste for  
16 the purpose stated in the application. The department may  
17 require modification of plans and specifications for the  
18 appropriation or related diversion or construction. It may  
19 issue a permit subject to terms, conditions, restrictions,  
20 and limitations it considers necessary to protect the rights  
21 of other appropriators, and it may issue temporary or  
22 seasonal permits. A permit shall be issued subject to  
23 existing rights and any final determination of those rights  
24 made under this chapter.

25 (2) The department may limit the time for commencement

1 of the appropriation works, completion of construction, and  
2 actual application of the water to the proposed beneficial  
3 use. In fixing those time limits, the department shall  
4 consider the cost and magnitude of the project, the  
5 engineering and physical features to be encountered, and, on  
6 projects designed for gradual development and gradually  
7 increased use of water, the time reasonably necessary for  
8 that gradual development and increased use. For good cause  
9 shown by the permittee, the department may in its discretion  
10 reasonably extend time limits.

11 (3) The original of the permit shall be sent to the  
12 county clerk and recorder in the county where the point of  
13 diversion or place of use is located for recordation  
14 permisses, and a copy shall be kept in the office of the  
15 department in Helena. After recordation, the clerk and  
16 recorder shall send the permit to the permittee.

17 ~~(4) The department shall provide to the county clerk~~  
18 ~~and recorder of the county wherein the point of diversion or~~  
19 ~~place of use is located quarterly reports and an annual~~  
20 ~~summary report of all water right permits, certificates, and~~  
21 ~~change approvals issued by the department within the~~  
22 ~~county."~~

23 Section 13. Section 85-2-314, MCA, is amended to read:

24 "85-2-314. Revocation or modification of permit. If  
25 the work on an appropriation is not commenced, prosecuted,

or completed within the time stated in the permit or an extension thereof or if the water is not being applied to the beneficial use contemplated in the permit or if the permit is otherwise not being followed, the department may, after notice, require the permittee to show cause why the permit should not be modified or revoked. If the permittee fails to show sufficient cause, the department may modify or revoke the permit."

Section 14. Section 85-2-315, MCA, is amended to read:

"85-2-315. Certificate of water right. (1) Upon actual application of water to the proposed beneficial use within the time allowed, the permittee shall notify the department that the appropriation has been properly completed. The department may then inspect the appropriation, and if it determines that the appropriation has been completed in substantial accordance with the permit, it shall issue the permittee a certificate of water right. The original of the certificate shall be sent to the ~~county clerk--and--recorder~~ ~~in the county wherein the point of diversion or place of use is--located--for--recordation~~ permittee, and a duplicate shall be kept in the office of the department in Helena. After ~~recordation--the--clerk--and--recorder--shall--send--the~~ certificate ~~to the appropriator.~~

(2) ~~Except as provided in 85-2-313, a certificate of water right in a particular source may not be issued prior~~

~~to a general determination under part 2 of this chapter--of existing rights in that source. The department shall provide to the county clerk and recorder of the county wherein the point of diversion or place of use is located quarterly reports and an annual summary report of all certificates of water right issued by the department within the county."~~

Section 15. Section 85-2-402, MCA, is amended to read:

"85-2-402. Changes in appropriation rights. (1) An appropriator may not change the place of diversion, place of use, purpose of use, or place of storage except as permitted under this section and approved by the department.

(2) The department shall approve the proposed change if it determines that the proposed change will not adversely affect the rights of other persons. If the department determines that the proposed change might adversely affect the rights of other persons, notice of the proposed change shall be given in accordance with 85-2-307. If the department determines that an objection filed by a person whose rights may be affected states a valid objection to the proposed change, the department shall hold a hearing thereon prior to its approval or denial of the proposed change. Objections shall meet the requirements of 85-2-308(2), and hearings shall be held in accordance with 85-2-309.

(3) An appropriator of more than 15 cubic feet per second may not change the purpose of use of an appropriation

1 right from an agricultural or irrigation use to an  
2 industrial use.

3 (4) The department may approve a change subject to  
4 such terms, conditions, restrictions, and limitations it  
5 considers necessary to protect the rights of other  
6 appropriators, including limitations on the time for  
7 completion of the change.

8 (5) If a change is not completed as approved by the  
9 department or if the terms, conditions, restrictions, and  
10 limitations of the change approval are not complied with,  
11 the department may, after notice and opportunity for  
12 hearing, require the appropriator to show cause why the  
13 change approval should not be modified or revoked. If the  
14 appropriator fails to show sufficient cause, the department  
15 may modify or revoke the change approval.

16 ~~(6) Without obtaining prior approval from the~~  
17 ~~department, an appropriator may not sever all or any part of~~  
18 ~~an appropriation right from the land to which it is~~  
19 ~~appurtenant, sell the appropriation right for other purposes~~  
20 ~~or to other lands, or make the appropriation right~~  
21 ~~appurtenant to other lands. The department shall approve the~~  
22 ~~proposed change if it determines that the proposed change~~  
23 ~~will not adversely affect the water rights of other persons.~~  
24 ~~If the department determines that the proposed change might~~  
25 ~~adversely affect the water rights of other persons, notice~~

1 ~~of the proposed change must be given in accordance with~~  
2 ~~85-2-307. If the department then determines that an~~  
3 ~~objection filed by a person whose water rights may be~~  
4 ~~affected states a valid objection to the proposed change,~~  
5 ~~the department shall hold a hearing thereon prior to its~~  
6 ~~approval or denial of the proposed change. Objections must~~  
7 ~~meet the requirements of 85-2-308, and hearings must be held~~  
8 ~~in accordance with 85-2-309.~~

9 ~~(7) The original of a change approval issued by the~~  
10 ~~department must be sent to the applicant, and a duplicate~~  
11 ~~must be kept in the office of the department in Helena.~~

12 ~~(8) A person holding an issued permit or change~~  
13 ~~approval that has not been perfected may change the place of~~  
14 ~~diversion, place of use, purpose of use, or place of storage~~  
15 ~~by filing an application for change pursuant to this~~  
16 ~~section."~~

17 Section 16. Section 85-2-403, MCA, is amended to read:

18 "85-2-403. Transfer of appropriation right. (1) The  
19 right to use water under a permit or certificate of water  
20 right shall pass with a conveyance of the land or transfer  
21 by operation of law, unless specifically exempted therefrom.  
22 All transfers of interests in appropriation rights shall be  
23 without loss of priority.

24 (2) The person receiving the appropriation interest  
25 shall file with the department notice of the transfer on a

form prescribed by the department, which must include but is not limited to the notarized signatures of the transferor and the transferee.

(3) ~~Without obtaining prior approval from the department, an appropriator may not sever all or any part of an appropriation right from the land to which it is appurtenant, set the appropriation right for other purposes or to other lands, or make the appropriation right appurtenant to other lands. The department shall approve the proposed change if it determines that the proposed change will not adversely affect the rights of other persons. If the department determines that the proposed change might adversely affect the rights of other persons, notice of the proposed change shall be given in accordance with 85-2-307. If the department then determines that an objection filed by a person whose rights may be affected states a valid objection to the proposed change, the department shall hold a hearing thereon prior to its approval or denial of the proposed change. Objections shall meet the requirements of 85-2-308(2) and hearings shall be held in accordance with 85-2-309. The department shall send an acknowledgment of receipt of a filed transfer to the transferor and the transferee, and a duplicate must be kept in the office of the department in Helena.~~

~~NEW SECTION.~~ Section 17. Permit action in highly

appropriated basins or subbasins. (1) The legislature may, by law, preclude permit applications, or the department may by rule reject permit applications or modify or condition permits issued in a highly appropriated basin or subbasin.

(2) A rule may be adopted under this section only upon a petition signed by at least 25% or 10, whichever is less, of the users of water in the source of supply within a basin or subbasin. The petition must be in a form as prescribed by the department and must allege facts showing that throughout or at certain times of the year or for certain beneficial uses:

(a) there are no unappropriated waters in the source of supply;

(b) the rights of prior appropriators will be adversely affected; or

(c) further uses will interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved.

(3) Within 60 days after submission of a petition, the department shall:

(a) deny the petition in writing, stating its reasons for denial;

(b) inform the petitioners that the department must study the allegations further before denying or proceeding further with the petition; or

1 (c) initiate rulemaking proceedings in accordance with  
2 2-4-302 through 2-4-305.

3 (4) Title 2, chapter 3, parts 1 through 4, govern  
4 rulemaking proceedings conducted under this section, except  
5 that in addition to the notice requirements of those parts,  
6 the department notice of the rulemaking hearing must be  
7 published at least once in each week for 3 successive weeks,  
8 not less than 30 days before the date of the hearing, in a  
9 newspaper of general circulation in the county or counties  
10 in which the source is located. The department shall serve  
11 by mail a copy of the notice not less than 30 days before  
12 the hearing upon each person or public agency known from the  
13 examination of the records of the department to be a  
14 claimant, appropriator, or permitholder of water in the  
15 source.

16 NEW SECTION. Section 18. Codification instruction.  
17 Section 17 is intended to be codified as an integral part of  
18 Title 85, chapter 2, and the provisions of Title 85, chapter  
19 2, apply to section 17.

20 NEW SECTION. Section 19. Severability. If a part of  
21 this act is invalid, all valid parts that are severable from  
22 the invalid part remain in effect. If a part of this act is  
23 invalid in one or more of its applications, the part remains  
24 in effect in all valid applications that are severable from  
25 the invalid applications.

1 NEW SECTION. Section 20. Effective date. This act is  
2 effective on passage and approval.

-End-

STATE OF MONTANA

REQUEST NO. 344-83

FISCAL NOTE

Form BD-15

compliance with a written request received February 7, 19 83, there is hereby submitted a Fiscal Note  
Senate Bill 370 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

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

DESCRIPTION OF PROPOSED LEGISLATION:

Senate Bill 370 provides for the general revision and clarification of certain laws  
relating to surface and ground water; ends sixteen specific sections; and provides  
an immediate effective date.

Senate Bill 370, simplifies and clarifies certain water-right law statutes, and also  
proposes amendments to shorten the permit processing times, as well as cutting  
administrative costs.

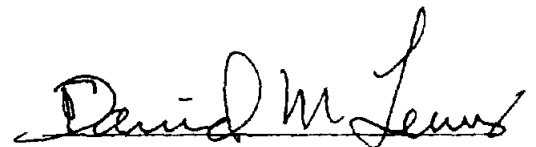
ASSUMPTIONS:

- 1) Recording costs are \$2 per page.
- 2) Average certificate is 1½ pages.
- 3) The department will record 10,000 certificates in fiscal year 1984 and 2,000  
certificates in fiscal year 1985.

FISCAL IMPACT:

This bill will reduce department operating expenses for recording certificates and  
permits, and issuing public notices, by \$47,000 in fiscal year 1984 and \$17,000 in  
fiscal year 1985. It will save \$905,000 over the life of the adjudication program.  
It will reduce revenues to clerks and recorders, but it will also reduce their  
workload.

FISCAL NOTE 12:BB/1



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-11-83

## 1 STATEMENT OF INTENT

## 2 SENATE BILL 370

3 Senate Agriculture, Livestock and Irrigation Committee

4  
5 A statement of intent is required for this bill because  
6 it delegates rulemaking authority to the Department of  
7 Natural Resources and Conservation in sections 1 and 17.

8 The intent is to provide the Department with the  
9 authority to adopt rules necessary to reject, modify, or  
10 condition water use permit applications in highly  
11 appropriated basins or subbasins. A rule may only be adopted  
12 under this section upon a petition signed by a certain  
13 percentage of water users in the source of supply or by  
14 direction of the Legislature. The petition must allege  
15 certain facts showing the need for the adoption of a rule.  
16 The Department must act on the petition within 60 days by:  
17 denying the petition and providing reasons to the  
18 petitioners; informing the petitioners that additional study  
19 of the allegations is necessary before denying or proceeding  
20 with the petition; or initiating the rulemaking proceeding.  
21 The rulemaking procedure must follow the notice requirements  
22 of the Montana Administrative Procedure Act and in addition  
23 the Department must publish notice of the rulemaking hearing  
24 once a week for three successive weeks in a newspaper of  
25 general circulation in which the source is located, and also

1 serve an individual copy of the notice on any known water  
2 right holder in the source of supply according to the  
3 Department's records.

4 This bill also delegates rulemaking authority to the  
5 Board of Natural Resources and Conservation in section 2.

6 The intent is to provide the Board with the authority  
7 to adopt, through rules, fees to be paid by applicants,  
8 petitioners, and others for services provided. Fees could be  
9 adopted for: rulemaking hearings to reject, modify, or  
10 condition water use permit applications in highly  
11 appropriated basins or subbasins; administrative hearings  
12 conducted by the Department to settle objections to permit  
13 or change applications; costs incurred during the field  
14 investigation of a complaint against a permittee and related  
15 revocation proceedings; and for costs incurred in the field  
16 verification of issued and completed permits and change  
17 approvals.



Approved by Committee  
on Agriculture Livestock  
& Irrigation

1                   SENATE BILL NO. 370  
2                   INTRODUCED BY ETCHART, GALT, LANE,  
3                   OCHSNER, ASAY, MANUEL, SPAETH  
4                   BY REQUEST OF THE DEPARTMENT OF NATURAL  
5                   RESOURCES AND CONSERVATION  
6  
7    A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND  
8    CLARIFY CERTAIN LAWS RELATING TO SURFACE AND GROUND WATER;  
9    AMENDING SECTIONS 85-2-112, 85-2-113, 85-2-123, 85-2-124,  
10   85-2-236, 85-2-302, 85-2-303, 85-2-306 THROUGH 85-2-308,  
11   85-2-311, 85-2-312, 85-2-314, 85-2-315, 85-2-402, AND  
12   85-2-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."  
13  
14   BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
15       Section 1. Section 85-2-112, MCA, is amended to read:  
16       "85-2-112. Department duties. The department shall:  
17       (1) enforce and administer this chapter and rules  
18       adopted by the board under 85-2-113, subject to the powers  
19       and duties of the supreme court under 3-7-204;  
20       (2) prescribe procedures, forms, and requirements for  
21       applications, permits, certificates, ~~declarations~~, claims of  
22       existing rights, and proceedings under this chapter and  
23       prescribe the information to be contained in any  
24       application, ~~declaration~~, claim of existing right, or other  
25       document to be filed with the department under this chapter

1   not inconsistent with the requirements of this chapter;  
2       (3) establish and keep in its Helena office a  
3   centralized record system of all existing rights and a  
4   public record of permits, certificates, ~~declarations~~, claims  
5   of existing rights, applications, and other documents filed  
6   in its office under this chapter;  
7       (4) cooperate with, assist, advise, and coordinate  
8   plans and activities with the federal, state, and local  
9   agencies in matters relating to this chapter;  
10       (5) upon request by any person, cooperate with,  
11   assist, and advise that person in matters pertaining to  
12   measuring water or filing ~~declarations with the department~~  
13   or claims of existing rights with a district court under  
14   this chapter;  
15       ~~(6) adopt rules necessary to reject, modify, or~~  
16   ~~condition permit applications in highly appropriated basins~~  
17   ~~or subbasins as provided in [section 17]."~~  
18       Section 2. Section 85-2-113, MCA, is amended to read:  
19       "85-2-113. Board powers and duties. (1) The board may  
20   prescribe fees or service charges for any public service  
21   rendered by the department under this chapter, including ~~but~~  
22   ~~not limited to~~ fees for the filing of applications or for  
23   the issuance of permits and certificates, ~~for rulemaking~~  
24   ~~hearings under [section 17], for administrative hearings~~  
25   ~~conducted under this chapter, for investigations concerning~~

~~permit revocations, for field verification of issued and~~  
~~completed permits, and all change approvals.~~ There shall be  
 no fees for ~~the filing of declarations or for~~ any action  
 taken by the department at the request of the water judge ~~or~~  
~~for the issuance of certificates of existing rights OR FOR~~  
~~THE ISSUANCE OF CERTIFICATES OF EXISTING RIGHTS.~~

(2) The board may adopt rules necessary to implement  
 and carry out the purposes and provisions of this chapter.  
 These rules may include but are not limited to rules to:

(a) govern the issuance and terms of interim permits  
 authorizing an applicant for a regular permit under this  
 chapter to begin appropriating water immediately, pending  
 final approval or denial by the department of the  
 application for a regular permit;

(b) require the owner or operator of appropriation  
 facilities to install and maintain suitable controlling and  
 measuring devices, except that the board may not require a  
 meter on a water well outside of a controlled groundwater  
 area or proposed controlled groundwater area unless the  
 maximum yield appropriation of the well is in excess of 100  
 gallons a minute;

(c) require the owner or operator of appropriation  
 facilities to report to the department the readings of  
 measuring devices at reasonable intervals and to file  
 reports on appropriations; and

(d) regulate the construction, use, and sealing of  
 wells to prevent the waste, contamination, or pollution of  
 groundwater.

(3) The board shall adopt rules providing for and  
 governing temporary emergency appropriations, without prior  
 application for a permit, necessary to protect lives or  
 property."

Section 3. Section 85-2-123, MCA, is amended to read:

"85-2-123. Deposit of fees and penalties. Except as  
 provided in 85-2-124, all fees and penalties collected under  
 this chapter shall be deposited in the ~~state general fund~~  
~~water right appropriation account established in 85-2-318.~~  
 All penalties or fines imposed by any court for a violation  
 of this chapter shall be deposited in the general fund of  
 the county where the court presides and shall be disposed of  
 in the same manner as any other penalty or fine."

Section 4. Section 85-2-124, MCA, is amended to read:

"85-2-124. Fees for environmental impact statements.  
 (1) whenever the department determines that the filing of an  
 application (or a combination of applications) for a permit  
 or approval under this chapter requires the preparation of  
 an environmental impact statement as prescribed by the  
 Montana Environmental Policy Act and the application (or  
 combination of applications) involves the use of 10,000 or  
 more acre-feet per year or 15 or more cubic feet per second

of water, the applicant shall pay to the department the fee prescribed in this section. The department shall notify the applicant in writing within 30 20 days of receipt of a correct and complete application (or a combination of applications) if it determines that an environmental impact statement and fee is required.

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

(3) The department and the applicant may determine by agreement the estimated cost of any facility for purposes of

computing the amount of the fee to be paid to the department by the applicant. The department may contract with an applicant for:

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

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

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

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

(5) No fee as prescribed by this section may be assessed against an applicant for a permit or approval if the applicant has also filed an application for a certificate of environmental compatibility or public need pursuant to the Montana Major Facility Siting Act, and the

appropriation or use of water involved in the application(s) for permit or approval has been or will be studied by the department pursuant to that act.

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

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

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

Section 5. Section 85-2-236, MCA, is amended to read:

"85-2-236. Certificate of water right. (1) When a final decree is entered, the water judge shall send a copy to the department. The department shall on the basis of the final decree issue a certificate of water right to each person decreed an existing right. The original of the certificate shall be sent to the ~~county clerk and recorder of the county where the point of diversion or place of use is located for recordation~~ person to whom the right is decreed. The department shall keep a copy of the certificate

~~in its office in Helena. After recordation, the clerk and recorder shall send the certificate to the person to whom the right is decreed.~~

(2) The department shall provide to the county clerk and recorder of the county wherein the point of diversion or place of use is located quarterly reports and an annual summary report of all certificates of water right issued by the department within the county."

Section 6. Section 85-2-302, MCA, is amended to read:

"85-2-302. Application for permit. Except as otherwise provided in (1) ~~and (2) through (3)~~ of 85-2-306, a person may not appropriate water or commence construction of diversion, impoundment, withdrawal, or distribution works therefor except by applying for and receiving a permit from the department. The application shall be made on a form prescribed by the department. The department shall make the forms available through its offices and the offices of the county clerk and recorders. The department shall return a defective application for correction or completion together with the reasons for returning it. An application does not lose priority of filing because of defects, if the application is corrected, completed, and refiled with the department within 30 days after its return to the applicant or within a further time as the department may allow. If an application is not corrected and completed within 30 days or

1 within a further time as the department allows, up to 18 3  
2 months, the priority date of the application shall be the  
3 date of refiling the application with the corrections with  
4 the department. An application not corrected within 18 3  
5 months shall be terminated."

6 Section 7. Section 85-2-303, MCA, is amended to read:

7 "85-2-303. Permit for conversion of nonproductive oil  
8 or gas well. A person who desires to convert a nonproductive  
9 oil or gas well to a water well ~~may do so immediately but~~  
10 shall file a notice of completion or apply for a permit,  
11 depending on the maximum ~~yearly~~ appropriation of the well, as  
12 otherwise provided in this chapter. The date of  
13 appropriation shall be the date of filing the notice of  
14 completion or the application for a permit."

15 Section 8. Section 85-2-306, MCA, is amended to read:

16 "85-2-306. Exceptions to permit requirements. (1)  
17 Outside the boundaries of a controlled groundwater area, a  
18 permit is not required before appropriating groundwater by  
19 means of a well or developed spring with a maximum  
20 appropriation of less than 100 gallons per minute. Within 60  
21 days of completion of the well or developed spring and  
22 appropriation of the groundwater for beneficial use, the  
23 appropriator shall file a notice of completion with the  
24 department on a form provided by the department at its  
25 offices and at the offices of the county clerk and

1 recorders. Upon receipt of the notice, the department shall  
2 review the notice and may, before issuing a certificate of  
3 water right, return a defective notice for correction or  
4 completion, together with the reasons for returning it. A  
5 notice does not lose priority of filing because of defects,  
6 if the notice is corrected, completed, and refiled with the  
7 department within 30 days or within a further time as the  
8 department may allow, not to exceed 6 months. If a notice is  
9 not corrected and completed within the time allowed, the  
10 priority date of appropriation shall be the date of refiling  
11 a correct and complete notice with the department. A  
12 certificate of water right may not be issued until a correct  
13 and complete notice has been filed with the department. The  
14 original of the certificate shall be sent to the county  
15 clerk and recorder in the county where the point of  
16 diversion or place of use is located for recordation. The  
17 department shall keep a copy of the certificate in its  
18 office in Helena. After recordation, the clerk and recorder  
19 shall send the certificate to the appropriator. The date of  
20 filing of the notice of completion is the date of priority  
21 of the right.

22 (2) An appropriator of groundwater by means of a well  
23 or developed spring, first put to beneficial use between  
24 January 1, 1962, and July 1, 1973, who did not file a notice  
25 of completion, as required by laws in force prior to April

1 14, 1981, with the county clerk and recorder shall file a  
 2 notice of completion, as provided in subsection (1) of this  
 3 section, with the department to perfect the water right. ~~Ine~~  
 4 ~~filing of a claim of existing water right pursuant to~~  
 5 ~~85-2-221 is sufficient notice of completion under this~~  
 6 ~~subsection.~~ The priority date of the appropriation shall be  
 7 the date of the filing of a notice as provided in subsection  
 8 (1) of this section ~~or the date of the filing of the claim~~  
 9 ~~of existing water right.~~ An appropriation under this  
 10 subsection is an existing right, and a permit is not  
 11 required; however, the department shall acknowledge the  
 12 receipt of a correct and complete filing of a notice of  
 13 completion, except that for an appropriation of less than  
 14 100 gallons per minute, the department shall issue a  
 15 certificate of water right.

16 (3) A permit is not required before constructing an  
 17 impoundment or pit and appropriating water for use by  
 18 livestock if the maximum capacity of the impoundment or pit  
 19 is less than 15 acre-feet and the appropriation is ~~less than~~  
 20 ~~30 acre-feet per year and is~~ from a source other than a  
 21 perennial flowing stream, and the impoundment or pit is to  
 22 be constructed on and will be accessible to a parcel of land  
 23 that is owned or under the control of the applicant and that  
 24 is 40 acres or larger. As used in this subsection, a  
 25 perennial flowing stream means a stream which historically

1 has flowed continuously at all seasons of the year, during  
 2 dry as well as wet years. However, within 60 days after  
 3 constructing the impoundment or pit, the appropriator shall  
 4 apply for a permit as prescribed by this part. Upon receipt  
 5 of a correct and complete application for a stockwater  
 6 provisional permit, the department shall then automatically  
 7 issue a provisional permit. If the department determines  
 8 after a hearing that the rights of other appropriators have  
 9 been or will be adversely affected, it may revoke the permit  
 10 or require the permittee to modify the impoundment or pit  
 11 and may then make the permit subject to such terms,  
 12 conditions, restrictions, or limitations it considers  
 13 necessary to protect the rights of other appropriators.

14 (4) A person may also appropriate water without  
 15 applying for or prior to receiving a permit under rules  
 16 adopted by the board under 85-2-113."

17 Section 9. Section 85-2-307, MCA, is amended to read:

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

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

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

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

21 Section 10. Section 85-2-308, MCA, is amended to read:

22 "85-2-308. Objections. (1) An objection to an  
 23 application must be filed by the date specified by the  
 24 department under 85-2-307(2).

25 (2) The objection must state the name and address of

1 the objector and facts tending to show that there are no  
 2 unappropriated waters in the proposed source, that the  
 3 proposed means of appropriation are inadequate, that the  
 4 property, water rights, or interests of the objector would  
 5 be adversely affected by the proposed appropriation, or--the  
 6 objector--may--state--any--other--objections--to--the--proposed  
 7 appropriation--he--considers--pertinent--that--the--proposed--use  
 8 of--water--is--not--a--beneficial--use,--or--that--the--proposed--use  
 9 will--interfere--unreasonably--with--other--planned--uses--or  
 10 developments--for--which--a--permit--has--been--issued--or--for--which  
 11 water--has--been--reserved."

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

13 "85-2-311. Criteria for issuance of permit. The  
 14 department shall issue a permit if:

15 (1) there are unappropriated waters in the source of  
 16 supply:

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

19 (b) in the amount the applicant seeks to appropriate;  
 20 and

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

23 (2) the water rights of a prior appropriator will not  
 24 be adversely affected;

25 (3) the proposed means of diversion, construction, and

1 operation of the appropriation works are adequate;

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

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

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

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

13 Section 12. Section 85-2-312, MCA, is amended to read:

14 "85-2-312. Terms of permit. (1) The department may  
15 issue a permit for less than the amount of water requested,  
16 but in no case may it issue a permit for more water than is  
17 requested or than can be beneficially used without waste for  
18 the purpose stated in the application. The department may  
19 require modification of plans and specifications for the  
20 appropriation or related diversion or construction. It may  
21 issue a permit subject to terms, conditions, restrictions,  
22 and limitations it considers necessary to protect the rights  
23 of other appropriators, and it may issue temporary or  
24 seasonal permits. A permit shall be issued subject to  
25 existing rights and any final determination of those rights

1 made under this chapter.

2 (2) The department may limit the time for commencement  
3 of the appropriation works, completion of construction, and  
4 actual application of the water to the proposed beneficial  
5 use. In fixing those time limits, the department shall  
6 consider the cost and magnitude of the project, the  
7 engineering and physical features to be encountered, and, on  
8 projects designed for gradual development and gradually  
9 increased use of water, the time reasonably necessary for  
10 that gradual development and increased use. For good cause  
11 shown by the permittee, the department may in its discretion  
12 reasonably extend time limits.

13 (3) The original of the permit shall be sent to the  
14 county--clerk--and--recorder--in--the--county--where--the--point--of--  
15 diversion--or--place--of--use--is--located--for--recordation  
16 permits, and a copy shall be kept in the office of the  
17 department in Helena. After--recordation--the--clerk--and  
18 recorder--shall--send--the--permit--to--the--permittee.

19 (4) The department shall provide to the county clerk  
20 and recorder of the county wherein the point of diversion or  
21 place of use is located quarterly reports and an annual  
22 summary report of all water right permits, certificates, and  
23 change approvals issued by the department within the  
24 county."

25 Section 13. Section 85-2-314, MCA, is amended to read:



1       "85-2-314. Revocation or modification of permit. If  
 2 the work on an appropriation is not commenced, prosecuted,  
 3 or completed within the time stated in the permit or an  
 4 extension thereof or if the water is not being applied to  
 5 the beneficial use contemplated in the permit or if the  
 6 permit is otherwise not being followed, the department may,  
 7 after notice, require the permittee to show cause why the  
 8 permit should not be modified or revoked. If the permittee  
 9 fails to show sufficient cause, the department may modify or  
 10 revoke the permit."

11       Section 14. Section 85-2-315, MCA, is amended to read:

12       "85-2-315. Certificate of water right. (1) Upon actual  
 13 application of water to the proposed beneficial use within  
 14 the time allowed, the permittee shall notify the department  
 15 that the appropriation has been properly completed. The  
 16 department may then inspect the appropriation, and if it  
 17 determines that the appropriation has been completed in  
 18 substantial accordance with the permit, it shall issue the  
 19 permittee a certificate of water right. The original of the  
 20 certificate shall be sent to the ~~county clerk and recorder~~  
 21 ~~in the county wherein the point of diversion or place of use~~  
 22 ~~is located for recordation~~ permittee, and a duplicate shall  
 23 be kept in the office of the department in Helena. After  
 24 ~~recordation, the clerk and recorder shall send the~~  
 25 ~~certificate to the appropriator.~~

1       (2) ~~Except as provided in 85-2-313, a certificate of~~  
 2 ~~water right in a particular source may not be issued prior~~  
 3 ~~to a general determination under part 2 of this chapter of~~  
 4 ~~existing rights in that source. The department shall provide~~  
 5 ~~to the county clerk and recorder of the county wherein the~~  
 6 ~~point of diversion or place of use is located quarterly~~  
 7 ~~reports and an annual summary report of all certificates of~~  
 8 ~~water right issued by the department within the county."~~

9       Section 15. Section 85-2-402, MCA, is amended to read:

10       "85-2-402. Changes in appropriation rights. (1) An  
 11 appropriator may not change the place of diversion, place of  
 12 use, purpose of use, or place of storage except as permitted  
 13 under this section and approved by the department.

14       (2) The department shall approve the proposed change  
 15 if it determines that the proposed change will not adversely  
 16 affect the rights of other persons. If the department  
 17 determines that the proposed change might adversely affect  
 18 the rights of other persons, notice of the proposed change  
 19 shall be given in accordance with 85-2-307. If the  
 20 department determines that an objection filed by a person  
 21 whose rights may be affected states a valid objection to the  
 22 proposed change, the department shall hold a hearing thereon  
 23 prior to its approval or denial of the proposed change.  
 24 Objections shall meet the requirements of 85-2-308(2), and  
 25 hearings shall be held in accordance with 85-2-309.

(3) An appropriator of more than 15 cubic feet per second may not change the purpose of use of an appropriation right from an agricultural or irrigation use to an industrial use.

(4) The department may approve a change subject to such terms, conditions, restrictions, and limitations it considers necessary to protect the rights of other appropriators, including limitations on the time for completion of the change.

(5) If a change is not completed as approved by the department or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

~~(6) Without obtaining prior approval from the department, an appropriator may not sever all or any part of an appropriation right from the land to which it is appurtenant, sell the appropriation right for other purposes or to other lands, or make the appropriation right appurtenant to other lands. The department shall approve the proposed change if it determines that the proposed change will not adversely affect the water rights of other persons.~~

~~If the department determines that the proposed change might adversely affect the water rights of other persons, notice of the proposed change must be given in accordance with 85-2-307. If the department then determines that an objection filed by a person whose water rights may be affected states a valid objection to the proposed change, the department shall hold a hearing thereon prior to its approval or denial of the proposed change. Objections must meet the requirements of 85-2-308, and hearings must be held in accordance with 85-2-309.~~

~~(7) The original of a change approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.~~

~~(8) A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section."~~

Section 16. Section 85-2-403, MCA, is amended to read:

"85-2-403. Transfer of appropriation right. (1) The right to use water under a permit or certificate of water right shall pass with a conveyance of the land or transfer by operation of law, unless specifically exempted therefrom. All transfers of interests in appropriation rights shall be without loss of priority.

1       ~~{2}--The--person--receiving--the--appropriation--interest~~  
2       ~~shall--file--with--the--department--notice--of--the--transfer--on--a~~  
3       ~~form--prescribed--by--the--department--which--must--include--but--is~~  
4       ~~not--limited--to--the--notarized--signatures--of--the--transferor~~  
5       ~~and--the--transferee.~~  
6       ~~{3}--Without--obtaining--prior--approval--from--the~~  
7       ~~department--an--appropriator--may--not--sever--all--or--any--part--of~~  
8       ~~an--appropriation--right--from--the--land--to--which--it--is~~  
9       ~~appurtenant--sell--the--appropriation--right--for--other--purposes~~  
10       ~~or--to--other--lands--or--make--the--appropriation--right~~  
11       ~~appurtenant--to--other--lands. The department shall approve the~~  
12       ~~proposed--change--if--it--determines--that--the--proposed--change~~  
13       ~~will--not--adversely--affect--the--rights--of--other--persons--if~~  
14       ~~the--department--determines--that--the--proposed--change--might~~  
15       ~~adversely--affect--the--rights--of--other--persons; notice--of--the~~  
16       ~~proposed--change--shall--be--given--in--accordance--with--85-2-307.~~  
17       ~~If--the--department--then--determines--that--an--objection--filed--by~~  
18       ~~a--person--whose--rights--may--be--affected--states--a--valid~~  
19       ~~objection--to--the--proposed--change, the department shall hold~~  
20       ~~a--hearing--thereon--prior--to--its--approval--or--denial--of--the~~  
21       ~~proposed--change. Objections shall meet the requirements of~~  
22       ~~85-2-308(2) and hearings shall be held in accordance with~~  
23       ~~85-2-309. The department shall send an acknowledgment of~~  
24       ~~receipt of a filed transfer to the transferor and the~~  
25       ~~transferee, and a duplicate must be kept in the office of~~

1       ~~the department in its office.~~

2       **NEW SECTION.** Section 17. Permit action in highly  
3       appropriated basins or subbasins. (1) The legislature may,  
4       by law, preclude permit applications, or the department may  
5       by rule reject permit applications or modify or condition  
6       permits issued in a highly appropriated basin or subbasin.

7       (2) A rule may be adopted under this section only upon  
8       a petition signed by at least 25% or 10, whichever is less,  
9       of the users of water in the source of supply within a basin  
10       or subbasin. The petition must be in a form as prescribed by  
11       the department and must allege facts showing that throughout  
12       or at certain times of the year or for certain beneficial  
13       uses:

14       (a) there are no unappropriated waters in the source  
15       of supply;

16       (b) the rights of prior appropriators will be  
17       adversely affected; or

18       (c) further uses will interfere unreasonably with  
19       other planned uses or developments for which a permit has  
20       been issued or for which water has been reserved.

21       (3) Within 60 days after submission of a petition, the  
22       department shall:

23       (a) deny the petition in writing, stating its reasons  
24       for denial;

25       (b) inform the petitioners that the department must

1 study the allegations further before denying or proceeding  
2 further with the petition; or

3 (c) initiate rulemaking proceedings in accordance with  
4 2-4-332 through 2-4-305.

5 (4) Title 2, chapter 3 ~~4~~, parts 1 through 4, govern  
6 rulemaking proceedings conducted under this section, except  
7 that in addition to the notice requirements of those parts,  
8 the department notice of the rulemaking hearing must be  
9 published at least once in each week for 3 successive weeks,  
10 not less than 30 days before the date of the hearing, in a  
11 newspaper of general circulation in the county or counties  
12 in which the source is located. The department shall serve  
13 by mail a copy of the notice not less than 30 days before  
14 the hearing upon each person or public agency known from the  
15 examination of the records of the department to be a  
16 claimant, appropriator, or permitholder of water in the  
17 source.

18 **NEW\_SECTION.** Section 18. Codification instruction.  
19 Section 17 is intended to be codified as an integral part of  
20 Title 85, chapter 2, and the provisions of Title 85, chapter  
21 2, apply to section 17.

22 **NEW\_SECTION.** Section 19. Severability. If a part of  
23 this act is invalid, all valid parts that are severable from  
24 the invalid part remain in effect. If a part of this act is  
25 invalid in one or more of its applications, the part remains

1 in effect in all valid applications that are severable from  
2 the invalid applications.

3 **NEW\_SECTION.** Section 20. Effective date. This act is  
4 effective on passage and approval.

-End-

## 1 STATEMENT OF INTENT

## 2 SENATE BILL 370

3 Senate Agriculture, Livestock and Irrigation Committee

4  
5 A statement of intent is required for this bill because  
6 it delegates rulemaking authority to the Department of  
7 Natural Resources and Conservation in sections 1 and 17.

8 The intent is to provide the Department with the  
9 authority to adopt rules necessary to reject, modify, or  
10 condition water use permit applications in highly  
11 appropriated basins or subbasins. A rule may only be adopted  
12 under this section upon a petition signed by a certain  
13 percentage of water users in the source of supply or by  
14 direction of the Legislature. The petition must allege  
15 certain facts showing the need for the adoption of a rule.  
16 The Department must act on the petition within 60 days by:  
17 denying the petition and providing reasons to the  
18 petitioners; informing the petitioners that additional study  
19 of the allegations is necessary before denying or proceeding  
20 with the petition; or initiating the rulemaking proceeding.  
21 The rulemaking procedure must follow the notice requirements  
22 of the Montana Administrative Procedure Act and in addition  
23 the Department must publish notice of the rulemaking hearing  
24 once a week for three successive weeks in a newspaper of  
25 general circulation in which the source is located, and also

1 serve an individual copy of the notice on any known water  
2 right holder in the source of supply according to the  
3 Department's records.

4 This bill also delegates rulemaking authority to the  
5 Board of Natural Resources and Conservation in section 2.

6 The intent is to provide the Board with the authority  
7 to adopt, through rules, fees to be paid by applicants,  
8 petitioners, and others for services provided. Fees could be  
9 adopted for: rulemaking hearings to reject, modify, or  
10 condition water use permit applications in highly  
11 appropriated basins or subbasins; administrative hearings  
12 conducted by the Department to settle objections to permit  
13 or change applications; costs incurred during the field  
14 investigation of a complaint against a permittee and related  
15 revocation proceedings; and for costs incurred in the field  
16 verification of issued and completed permits and change  
17 approvals.

SENATE BILL NO. 370  
INTRODUCED BY ETCHART, GALT, LANE,  
OCHSNER, ASAY, MANUEL, SPAETH  
BY REQUEST OF THE DEPARTMENT OF NATURAL  
RESOURCES AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND  
CLARIFY CERTAIN LAWS RELATING TO SURFACE AND GROUND WATER;  
AMENDING SECTIONS 85-2-112, 85-2-113, 85-2-123, 85-2-124,  
85-2-236, 85-2-302, 85-2-303, 85-2-306 THROUGH 85-2-308,  
85-2-311, 85-2-312, 85-2-314, 85-2-315, 85-2-402, AND  
85-2-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 85-2-112, MCA, is amended to read:

"85-2-112. Department duties. The department shall:

(1) enforce and administer this chapter and rules  
adopted by the board under 85-2-113, subject to the powers  
and duties of the supreme court under 3-7-204;

(2) prescribe procedures, forms, and requirements for  
applications, permits, certificates, ~~declarations~~, claims of  
existing rights, and proceedings under this chapter and  
prescribe the information to be contained in any  
application, ~~declaratory~~ claim of existing right, or other  
document to be filed with the department under this chapter

not inconsistent with the requirements of this chapter;

(3) establish and keep in its Helena office a  
centralized record system of all existing rights and a  
public record of permits, certificates, ~~declarations~~, claims  
of existing rights, applications, and other documents filed  
in its office under this chapter;

(4) cooperate with, assist, advise, and coordinate  
plans and activities with the federal, state, and local  
agencies in matters relating to this chapter;

(5) upon request by any person, cooperate with,  
assist, and advise that person in matters pertaining to  
measuring water or filing ~~declarations with the department~~  
or claims of existing rights with a district court under  
this chapter;

~~(6) adopt rules necessary to reject, modify, or~~  
~~condition permit applications in highly appropriated basins~~  
~~or subbasins as provided in [section 17]."~~

Section 2. Section 85-2-113, MCA, is amended to read:

"85-2-113. Board powers and duties. (1) The board may  
prescribe fees or service charges for any public service  
rendered by the department under this chapter, including ~~but~~  
~~not limited to~~ fees for the filing of applications or for  
the issuance of permits and certificates, ~~for rulemaking~~  
~~hearings under [section 17], for administrative hearings~~  
~~conducted under this chapter, for investigations concerning~~

~~permit revocation, for field verification of issued and~~  
~~completed permits, and all change approvals.~~ There shall be  
 no fees for the ~~fitting of declarations or~~ for any action  
 taken by the department at the request of the water judge or  
 for the ~~issuance of certificates of existing rights~~ OR EOR  
 THE ISSUANCE OF CERTIFICATES OF EXISTING RIGHTS.

(2) The board may adopt rules necessary to implement  
 and carry out the purposes and provisions of this chapter.  
 These rules may include but are not limited to rules to:

(a) govern the issuance and terms of interim permits  
 authorizing an applicant for a regular permit under this  
 chapter to begin appropriating water immediately, pending  
 final approval or denial by the department of the  
 application for a regular permit;

(b) require the owner or operator of appropriation  
 facilities to install and maintain suitable controlling and  
 measuring devices, except that the board may not require a  
 meter on a water well outside of a controlled groundwater  
 area or proposed controlled groundwater area unless the  
 maximum yield ~~appropriation~~ of the well is in excess of 100  
 gallons a minute;

(c) require the owner or operator of appropriation  
 facilities to report to the department the readings of  
 measuring devices at reasonable intervals and to file  
 reports on appropriations; and

(d) regulate the construction, use, and sealing of  
 wells to prevent the waste, contamination, or pollution of  
 groundwater.

(3) The board shall adopt rules providing for and  
 governing temporary emergency appropriations, without prior  
 application for a permit, necessary to protect lives or  
 property."

Section 3. Section 85-2-123, MCA, is amended to read:

"85-2-123. Deposit of fees and penalties. Except as  
 provided in 85-2-124, all fees and penalties collected under  
 this chapter shall be deposited in the ~~state general fund~~  
~~water right appropriation account established in 85-2-318.~~  
 All penalties or fines imposed by any court for a violation  
 of this chapter shall be deposited in the general fund of  
 the county where the court presides and shall be disposed of  
 in the same manner as any other penalty or fine."

Section 4. Section 85-2-124, MCA, is amended to read:

"85-2-124. Fees for environmental impact statements.  
 (1) Whenever the department determines that the filing of an  
 application (or a combination of applications) for a permit  
 or approval under this chapter requires the preparation of  
 an environmental impact statement as prescribed by the  
 Montana Environmental Policy Act and the application (or  
 combination of applications) involves the use of 10,000 or  
 more acre-feet per year or 15 or more cubic feet per second

1 of water, the applicant shall pay to the department the fee  
 2 prescribed in this section. The department shall notify the  
 3 applicant in writing within 30 20 days of receipt of a  
 4 correct and complete application (or a combination of  
 5 applications) if it determines that an environmental impact  
 6 statement and fee is required.

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

24 (3) The department and the applicant may determine by  
 25 agreement the estimated cost of any facility for purposes of

1 computing the amount of the fee to be paid to the department  
 2 by the applicant. The department may contract with an  
 3 applicant for:

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

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

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

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

21 (5) No fee as prescribed by this section may be  
 22 assessed against an applicant for a permit or approval if  
 23 the applicant has also filed an application for a  
 24 certificate of environmental compatibility or public need  
 25 pursuant to the Montana Major Facility Siting Act, and the



1 appropriation or use of water involved in the application(s)  
2 for permit or approval has been or will be studied by the  
3 department pursuant to that act.

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

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

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

16 Section 5. Section 85-2-236, MCA, is amended to read:

17 "85-2-236. Certificate of water right. (1) When a  
18 final decree is entered, the water judge shall send a copy  
19 to the department. The department shall on the basis of the  
20 final decree issue a certificate of water right to each  
21 person decreed an existing right. The original of the  
22 certificate shall be sent to the county clerk--and--recorder  
23 of--the--county--where--the--point--of--diversion--or--place--of--use  
24 is--located--for--recordation person to whom the right is  
25 decreed. The department shall keep a copy of the certificate

1 in its office in Helena. After recordation--the clerk and  
2 recorder--shall--send--the--certificate--to--the--person--to--whom  
3 the right is decreed.

4 (2) The department shall provide to the county clerk  
5 and recorder of the county wherein the point of diversion or  
6 place of use is located quarterly reports and an annual  
7 summary report of all certificates of water right issued by  
8 the department within the county."

9 Section 6. Section 85-2-302, MCA, is amended to read:

10 "85-2-302. Application for permit. Except as otherwise  
11 provided in (1) and (2) through (3) of 85-2-306, a person  
12 may not appropriate water or commence construction of  
13 diversion, impoundment, withdrawal, or distribution works  
14 therefor except by applying for and receiving a permit from  
15 the department. The application shall be made on a form  
16 prescribed by the department. The department shall make the  
17 forms available through its offices and the offices of the  
18 county clerk and recorders. The department shall return a  
19 defective application for correction or completion together  
20 with the reasons for returning it. An application does not  
21 lose priority of filing because of defects, if the  
22 application is corrected, completed, and refiled with the  
23 department within 30 days after its return to the applicant  
24 or within a further time as the department may allow. If an  
25 application is not corrected and completed within 30 days or

1 within a further time as the department allows, up to 18 3  
2 months, the priority date of the application shall be the  
3 date of refiling the application with the corrections with  
4 the department. An application not corrected within 18 2  
5 months shall be terminated."

6 Section 7. Section 85-2-303, MCA, is amended to read:

7 "85-2-303. Permit for conversion of nonproductive oil  
8 or gas well. A person who desires to convert a nonproductive  
9 oil or gas well to a water well ~~may do so immediately but~~  
10 shall file a notice of completion or apply for a permit,  
11 depending on the maximum ~~yield~~ appropriation of the well, as  
12 otherwise provided in this chapter. The date of  
13 appropriation shall be the date of filing the notice of  
14 completion or the application for a permit."

15 Section 8. Section 85-2-306, MCA, is amended to read:

16 "85-2-306. Exceptions to permit requirements. (1)  
17 Outside the boundaries of a controlled groundwater area, a  
18 permit is not required before appropriating groundwater by  
19 means of a well or developed spring with a maximum  
20 appropriation of less than 100 gallons per minute. Within 60  
21 days of completion of the well or developed spring and  
22 appropriation of the groundwater for beneficial use, the  
23 appropriator shall file a notice of completion with the  
24 department on a form provided by the department at its  
25 offices and at the offices of the county clerk and

1 recorders. Upon receipt of the notice, the department shall  
2 review the notice and may, before issuing a certificate of  
3 water right, return a defective notice for correction or  
4 completion, together with the reasons for returning it. A  
5 notice does not lose priority of filing because of defects,  
6 if the notice is corrected, completed, and refiled with the  
7 department within 30 days or within a further time as the  
8 department may allow, not to exceed 6 months. If a notice is  
9 not corrected and completed within the time allowed, the  
10 priority date of appropriation shall be the date of refiling  
11 a correct and complete notice with the department. A  
12 certificate of water right may not be issued until a correct  
13 and complete notice has been filed with the department. The  
14 original of the certificate shall be sent to the county  
15 clerk and recorder in the county where the point of  
16 diversion or place of use is located for recordation. The  
17 department shall keep a copy of the certificate in its  
18 office in Helena. After recordation, the clerk and recorder  
19 shall send the certificate to the appropriator. The date of  
20 filing of the notice of completion is the date of priority  
21 of the right.

22 (2) An appropriator of groundwater by means of a well  
23 or developed spring, first put to beneficial use between  
24 January 1, 1962, and July 1, 1973, who did not file a notice  
25 of completion, as required by laws in force prior to April

1 14, 1981, with the county clerk and recorder shall file a  
 2 notice of completion, as provided in subsection (1) of this  
 3 section, with the department to perfect the water right. ~~The~~  
 4 ~~filing of a claim of existing water right pursuant to~~  
 5 ~~85-2-221 is sufficient notice of completion under this~~  
 6 ~~subsection.~~ The priority date of the appropriation shall be  
 7 the date of the filing of a notice as provided in subsection  
 8 (1) of this section ~~or the date of the filing of the claim~~  
 9 ~~of existing water right.~~ An appropriation under this  
 10 subsection is an existing right, and a permit is not  
 11 required; however, the department shall acknowledge the  
 12 receipt of a correct and complete filing of a notice of  
 13 completion, except that for an appropriation of less than  
 14 100 gallons per minute, the department shall issue a  
 15 certificate of water right.

16 (3) A permit is not required before constructing an  
 17 impoundment or pit and appropriating water for use by  
 18 livestock if the maximum capacity of the impoundment or pit  
 19 is less than 15 acre-feet and the appropriation is ~~less than~~  
 20 ~~30 acre-feet per year and is~~ from a source other than a  
 21 perennial flowing stream, and the impoundment or pit is to  
 22 be constructed on and will be accessible to a parcel of land  
 23 that is owned or under the control of the applicant and that  
 24 is 40 acres or larger. As used in this subsection, a  
 25 perennial flowing stream means a stream which historically

1 has flowed continuously at all seasons of the year, during  
 2 dry as well as wet years. However, within 60 days after  
 3 constructing the impoundment or pit, the appropriator shall  
 4 apply for a permit as prescribed by this part. Upon receipt  
 5 of a correct and complete application for a stockwater  
 6 provisional permit, the department shall then automatically  
 7 issue a provisional permit. If the department determines  
 8 after a hearing that the rights of other appropriators have  
 9 been or will be adversely affected, it may revoke the permit  
 10 or require the permittee to modify the impoundment or pit  
 11 and may then make the permit subject to such terms,  
 12 conditions, restrictions, or limitations it considers  
 13 necessary to protect the rights of other appropriators.

14 (4) A person may also appropriate water without  
 15 applying for or prior to receiving a permit under rules  
 16 adopted by the board under 85-2-113."

17 Section 9. Section 85-2-307, MCA, is amended to read:  
 18 "85-2-307. Notice of application. (1) Upon receipt of  
 19 a proper application for a permit, the department shall  
 20 prepare a notice containing the facts pertinent to the  
 21 application and shall publish the notice in a newspaper of  
 22 general circulation in the area of the source once a week  
 23 for 2 consecutive weeks. Before the last date of  
 24 publication, the department shall also serve the notice by  
 25 first-class mail upon an appropriator of water or applicant

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

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

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

21 Section 10. Section 85-2-308, MCA, is amended to read:  
 22 "85-2-308. Objections. (1) An objection to an  
 23 application must be filed by the date specified by the  
 24 department under 85-2-307(2).

25 (2) The objection must state the name and address of

1 the objector and facts tending to show that there are no  
 2 unappropriated waters in the proposed source, that the  
 3 proposed means of appropriation are inadequate, that the  
 4 property, water rights, or interests of the objector would  
 5 be adversely affected by the proposed appropriation, or--the  
 6 objector--may--state--any--other--objections--to--the--proposed  
 7 appropriation--he--considers--pertinent--that--the--proposed--use  
 8 of--water--is--not--a--beneficial--use,--or--that--the--proposed--use  
 9 will--interfere--unreasonably--with--other--planned--uses--or  
 10 developments--for--which--a--permit--has--been--issued--or--for--which  
 11 water--has--been--reserved."

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

13 "85-2-311. Criteria for issuance of permit. The  
 14 department shall issue a permit if:

15 (1) there are unappropriated waters in the source of  
 16 supply:

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

19 (b) in the amount the applicant seeks to appropriate;  
 20 and

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

23 (2) the water rights of a prior appropriator will not  
 24 be adversely affected;

25 (3) the proposed means of diversion, construction, and

1 operation of the appropriation works are adequate;

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

3 (5) the proposed use will not interfere unreasonably

4 with other planned uses or developments for which a permit

5 has been issued or for which water has been reserved;

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

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

8 more proves by clear and convincing evidence that the rights

9 of a prior appropriator will not be adversely affected;

10 (7) except as provided in subsection (6), the

11 applicant proves by substantial credible evidence the

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

13 Section 12. Section 85-2-312, MCA, is amended to read:

14 "85-2-312. Terms of permit. (1) The department may

15 issue a permit for less than the amount of water requested,

16 but in no case may it issue a permit for more water than is

17 requested or than can be beneficially used without waste for

18 the purpose stated in the application. The department may

19 require modification of plans and specifications for the

20 appropriation or related diversion or construction. It may

21 issue a permit subject to terms, conditions, restrictions,

22 and limitations it considers necessary to protect the rights

23 of other appropriators, and it may issue temporary or

24 seasonal permits. A permit shall be issued subject to

25 existing rights and any final determination of those rights

1 made under this chapter.

2 (2) The department may limit the time for commencement

3 of the appropriation works, completion of construction, and

4 actual application of the water to the proposed beneficial

5 use. In fixing those time limits, the department shall

6 consider the cost and magnitude of the project, the

7 engineering and physical features to be encountered, and, on

8 projects designed for gradual development and gradually

9 increased use of water, the time reasonably necessary for

10 that gradual development and increased use. For good cause

11 shown by the permittee, the department may in its discretion

12 reasonably extend time limits.

13 (3) The original of the permit shall be sent to the

14 county--clerk--and--recorder--in--the--county--where--the--point--of--

15 diversion--or--place--of--use--is--located--for--recordation

16 permittee, and a copy shall be kept in the office of the

17 department in Helena. After--recordation--the--clerk--and

18 recorder--shall--send--the--permit--to--the--permittee.

19 ~~(4) The department shall provide to the county clerk~~

20 ~~and recorder of the county wherein the point of diversion or~~

21 ~~place of use is located quarterly reports and an annual~~

22 ~~summary report of all water right permits, certificates, and~~

23 ~~change--approvals issued by the department within the~~

24 ~~county."~~

25 Section 13. Section 85-2-314, MCA, is amended to read:

"85-2-314. Revocation or modification of permit. If the work on an appropriation is not commenced, prosecuted, or completed within the time stated in the permit or an extension thereof or if the water is not being applied to the beneficial use contemplated in the permit or if the permit is otherwise not being followed, the department may, after notice, require the permittee to show cause why the permit should not be modified or revoked. If the permittee fails to show sufficient cause, the department may modify or revoke the permit."

Section 14. Section 85-2-315, MCA, is amended to read:

"85-2-315. Certificate of water right. (1) Upon actual application of water to the proposed beneficial use within the time allowed, the permittee shall notify the department that the appropriation has been properly completed. The department may then inspect the appropriation, and if it determines that the appropriation has been completed in substantial accordance with the permit, it shall issue the permittee a certificate of water right. The original of the certificate shall be sent to the county clerk and recorder in the county wherein the point of diversion or place of use is located for recordation ~~permittee~~, and a duplicate shall be kept in the office of the department in Helena. After ~~recordation, the clerk and recorder shall send the~~ certificate to the appropriator."

(2) ~~Except as provided in 85-2-313, a certificate of water right in a particular source may not be issued prior to a general determination under part 2 of this chapter of existing rights in that source. The department shall provide to the county clerk and recorder of the county wherein the point of diversion or place of use is located quarterly reports and an annual summary report of all certificates of water right issued by the department within the county.~~"

Section 15. Section 85-2-402, MCA, is amended to read:

"85-2-402. Changes in appropriation rights. (1) An appropriator may not change the place of diversion, place of use, purpose of use, or place of storage except as permitted under this section and approved by the department.

(2) The department shall approve the proposed change if it determines that the proposed change will not adversely affect the rights of other persons. If the department determines that the proposed change might adversely affect the rights of other persons, notice of the proposed change shall be given in accordance with 85-2-307. If the department determines that an objection filed by a person whose rights may be affected states a valid objection to the proposed change, the department shall hold a hearing thereon prior to its approval or denial of the proposed change. Objections shall meet the requirements of 85-2-308(2), and hearings shall be held in accordance with 85-2-309.

(3) An appropriator of more than 15 cubic feet per second may not change the purpose of use of an appropriation right from an agricultural or irrigation use to an industrial use.

(4) The department may approve a change subject to such terms, conditions, restrictions, and limitations it considers necessary to protect the rights of other appropriators, including limitations on the time for completion of the change.

(5) If a change is not completed as approved by the department or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

~~(6) Without obtaining prior approval from the department, an appropriator may not sever all or any part of an appropriation right from the land to which it is appurtenant, sell the appropriation right for other purposes or to other lands, or make the appropriation right appurtenant to other lands. The department shall approve the proposed change if it determines that the proposed change will not adversely affect the water rights of other persons.~~

~~If the department determines that the proposed change might adversely affect the water rights of other persons, notice of the proposed change must be given in accordance with 85-2-307. If the department then determines that an objection filed by a person whose water rights may be affected states a valid objection to the proposed change, the department shall hold a hearing thereon prior to its approval or denial of the proposed change. Objections must meet the requirements of 85-2-308, and hearings must be held in accordance with 85-2-309.~~

~~(7) The original of a change approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.~~

~~(8) A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section."~~

Section 16. Section 85-2-403, MCA, is amended to read:  
 "85-2-403. Transfer of appropriation right. (1) The right to use water under a permit or certificate of water right shall pass with a conveyance of the land or transfer by operation of law, unless specifically exempted therefrom. All transfers of interests in appropriation rights shall be without loss of priority.

1     ~~{2}--The--person--receiving--the--appropriation--interest~~  
 2     ~~shall--file--with--the--department--notice--of--the--transfer--on--a~~  
 3     ~~form--prescribed--by--the--department--which--must--include--but--is~~  
 4     ~~not--limited--to--the--notarized--signature--of--the--transferor~~  
 5     ~~and--the--transferee--~~  
 6     ~~{3}--Without--obtaining--prior--approval--from--the~~  
 7     ~~department--an--appropriator--may--not--sever--all--or--any--part--of~~  
 8     ~~an--appropriation--right--from--the--land--to--which--it--is~~  
 9     ~~appurtenant--sell--the--appropriation--right--for--other--purposes~~  
 10    ~~or--to--other--lands--or--make--the--appropriation--right~~  
 11    ~~appurtenant--to--other--lands--The--department--shall--approve--the~~  
 12    ~~proposed--change--if--it--determines--that--the--proposed--change~~  
 13    ~~will--not--adversely--affect--the--rights--of--other--persons--if~~  
 14    ~~the--department--determines--that--the--proposed--change--might~~  
 15    ~~adversely--affect--the--rights--of--other--persons--notice--of--the~~  
 16    ~~proposed--change--shall--be--given--in--accordance--with--85-2-307--~~  
 17    ~~if--the--department--then--determines--that--an--objection--filed--by~~  
 18    ~~a--person--whose--rights--may--be--affected--states--a--valid~~  
 19    ~~objection--to--the--proposed--change--the--department--shall--hold~~  
 20    ~~a--hearing--thereon--prior--to--its--approval--or--denial--of--the~~  
 21    ~~proposed--change----Objections--shall--meet--the--requirements--of~~  
 22    ~~85-2-308{2}--and--hearings--shall--be--held--in--accordance--with~~  
 23    ~~85-2-309-- The--department--shall--send--an--acknowledgment--of~~  
 24    ~~receipt--of--a--filed--transfer--to--the--transferor--and--the~~  
 25    ~~transferee--and--a--duplicate--must--be--kept--in--the--office--of~~

1     ~~the--department--in--Helenax"~~  
 2     NEW SECTION. Section 17. Permit action in highly  
 3     appropriated basins or subbasins. (1) The legislature may,  
 4     by law, preclude permit applications, or the department may  
 5     by rule reject permit applications or modify or condition  
 6     permits issued in a highly appropriated basin or subbasin.  
 7     (2) A rule may be adopted under this section only upon  
 8     a petition signed by at least 25% or 10, whichever is less,  
 9     of the users of water in the source of supply within a basin  
 10    or subbasin. The petition must be in a form as prescribed by  
 11    the department and must allege facts showing that throughout  
 12    or at certain times of the year or for certain beneficial  
 13    uses:  
 14        (a) there are no unappropriated waters in the source  
 15        of supply;  
 16        (b) the rights of prior appropriators will be  
 17        adversely affected; or  
 18        (c) further uses will interfere unreasonably with  
 19        other planned uses or developments for which a permit has  
 20        been issued or for which water has been reserved.  
 21    (3) Within 60 days after submission of a petition, the  
 22    department shall:  
 23        (a) deny the petition in writing, stating its reasons  
 24        for denial;  
 25        (b) inform the petitioners that the department must



1 study the allegations further before denying or proceeding  
2 further with the petition; or

3 (c) initiate rulemaking proceedings in accordance with  
4 2-4-302 through 2-4-305.

5 (4) Title 2, chapter 3 4, parts 1 through 4, govern  
6 rulemaking proceedings conducted under this section, except  
7 that in addition to the notice requirements of those parts,  
8 the department notice of the rulemaking hearing must be  
9 published at least once in each week for 3 successive weeks,  
10 not less than 30 days before the date of the hearing, in a  
11 newspaper of general circulation in the county or counties  
12 in which the source is located. The department shall serve  
13 by mail a copy of the notice not less than 30 days before  
14 the hearing upon each person or public agency known from the  
15 examination of the records of the department to be a  
16 claimant, appropriator, or permit holder of water in the  
17 source.

18 **NEW\_SECTION.** Section 18. Codification instruction.  
19 Section 17 is intended to be codified as an integral part of  
20 Title 85, chapter 2, and the provisions of Title 85, chapter  
21 2, apply to section 17.

22 **NEW\_SECTION.** Section 19. Severability. If a part of  
23 this act is invalid, all valid parts that are severable from  
24 the invalid part remain in effect. If a part of this act is  
25 invalid in one or more of its applications, the part remains

1 in effect in all valid applications that are severable from  
2 the invalid applications.

3 **NEW\_SECTION.** Section 20. Effective date. This act is  
4 effective on passage and approval.

-End-

HOUSE NATURAL RESOURCES COMMITTEE AMENDMENTS TO SB 370  
March 18, 1983

1. Page 14, line 3.

Following: "the"

Insert: "property,"

2. Page 14, line 4.

Following: "rights"

Insert: ", or interests"

## 1 STATEMENT OF INTENT

## 2 SENATE BILL 370

3 Senate Agriculture, Livestock and Irrigation Committee

4  
5 A statement of intent is required for this bill because  
6 it delegates rulemaking authority to the Department of  
7 Natural Resources and Conservation in sections 1 and 17.

8 The intent is to provide the Department with the  
9 authority to adopt rules necessary to reject, modify, or  
10 condition water use permit applications in highly  
11 appropriated basins or subbasins. A rule may only be adopted  
12 under this section upon a petition signed by a certain  
13 percentage of water users in the source of supply or by  
14 direction of the Legislature. The petition must allege  
15 certain facts showing the need for the adoption of a rule.  
16 The Department must act on the petition within 60 days by:  
17 denying the petition and providing reasons to the  
18 petitioners; informing the petitioners that additional study  
19 of the allegations is necessary before denying or proceeding  
20 with the petition; or initiating the rulemaking proceeding.  
21 The rulemaking procedure must follow the notice requirements  
22 of the Montana Administrative Procedure Act and in addition  
23 the Department must publish notice of the rulemaking hearing  
24 once a week for three successive weeks in a newspaper of  
25 general circulation in which the source is located, and also

1 serve an individual copy of the notice on any known water  
2 right holder in the source of supply according to the  
3 Department's records.

4 This bill also delegates rulemaking authority to the  
5 Board of Natural Resources and Conservation in section 2.

6 The intent is to provide the Board with the authority  
7 to adopt, through rules, fees to be paid by applicants,  
8 petitioners, and others for services provided. Fees could be  
9 adopted for: rulemaking hearings to reject, modify, or  
10 condition water use permit applications in highly  
11 appropriated basins or subbasins; administrative hearings  
12 conducted by the Department to settle objections to permit  
13 or change applications; costs incurred during the field  
14 investigation of a complaint against a permittee and related  
15 revocation proceedings; and for costs incurred in the field  
16 verification of issued and completed permits and change  
17 approvals.

## SENATE BILL NO. 370

INTRODUCED BY ETCHART, GALT, LANE,

OCHSNER, ASAY, MANUEL, SPAETH

BY REQUEST OF THE DEPARTMENT OF NATURAL

RESOURCES AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY CERTAIN LAWS RELATING TO SURFACE AND GROUND WATER; AMENDING SECTIONS 85-2-112, 85-2-113, 85-2-123, 85-2-124, 85-2-236, 85-2-302, 85-2-303, 85-2-306 THROUGH 85-2-308, 85-2-311, 85-2-312, 85-2-314, 95-2-315, 85-2-402, AND 85-2-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 85-2-112, MCA, is amended to read:

"85-2-112. Department duties. The department shall:

(1) enforce and administer this chapter and rules adopted by the board under 85-2-113, subject to the powers and duties of the supreme court under 3-7-204;

(2) prescribe procedures, forms, and requirements for applications, permits, certificates, ~~declarations~~, claims of existing rights, and proceedings under this chapter and prescribe the information to be contained in any application, ~~declaration~~, claim of existing right, or other document to be filed with the department under this chapter

not inconsistent with the requirements of this chapter;

(3) establish and keep in its Helena office a centralized record system of all existing rights and a public record of permits, certificates, ~~declarations~~, claims of existing rights, applications, and other documents filed in its office under this chapter;

(4) cooperate with, assist, advise, and coordinate plans and activities with the federal, state, and local agencies in matters relating to this chapter;

(5) upon request by any person, cooperate with, assist, and advise that person in matters pertaining to measuring water or filing ~~declarations with the department~~ or claims of existing rights with a district court under this chapter;

~~(6) adopt rules necessary to reject, modify, or condition permit applications in highly appropriated basins or subbasins as provided in [section 17]."~~

Section 2. Section 85-2-113, MCA, is amended to read:

"85-2-113. Board powers and duties. (1) The board may prescribe fees or service charges for any public service rendered by the department under this chapter, including ~~but not limited to~~ fees for the filing of applications or for the issuance of permits and certificates, ~~for rulemaking hearings under [section 17], for administrative hearings conducted under this chapter, for investigations concerning~~

~~permit revocations for field verification of issued and completed permits and all change approvals.~~ There shall be no fees for the ~~filling of declarations or for~~ any action taken by the department at the request of the water judge or ~~for the issuance of certificates of existing rights OR FOR THE ISSUANCE OF CERTIFICATES OF EXISTING RIGHTS.~~

(2) The board may adopt rules necessary to implement and carry out the purposes and provisions of this chapter. These rules may include but are not limited to rules to:

(a) govern the issuance and terms of interim permits authorizing an applicant for a regular permit under this chapter to begin appropriating water immediately, pending final approval or denial by the department of the application for a regular permit;

(b) require the owner or operator of appropriation facilities to install and maintain suitable controlling and measuring devices, except that the board may not require a meter on a water well outside of a controlled groundwater area or proposed controlled groundwater area unless the maximum ~~yield~~ appropriaion of the well is in excess of 100 gallons a minute;

(c) require the owner or operator of appropriation facilities to report to the department the readings of measuring devices at reasonable intervals and to file reports on appropriations; and

(d) regulate the construction, use, and sealing of wells to prevent the waste, contamination, or pollution of groundwater.

(3) The board shall adopt rules providing for and governing temporary emergency appropriations, without prior application for a permit, necessary to protect lives or property."

Section 3. Section 85-2-123, MCA, is amended to read:

"85-2-123. Deposit of fees and penalties. Except as provided in 85-2-124, all fees and penalties collected under this chapter shall be deposited in the ~~state-general fund~~ water right appropriation account established in 85-2-318. All penalties or fines imposed by any court for a violation of this chapter shall be deposited in the general fund of the county where the court presides and shall be disposed of in the same manner as any other penalty or fine."

Section 4. Section 85-2-124, MCA, is amended to read:

"85-2-124. Fees for environmental impact statements. (1) whenever the department determines that the filing of an application (or a combination of applications) for a permit or approval under this chapter requires the preparation of an environmental impact statement as prescribed by the Montana Environmental Policy Act and the application (or combination of applications) involves the use of 10,000 or more acre-feet per year or 15 or more cubic feet per second

1 of water, the applicant shall pay to the department the fee  
 2 prescribed in this section. The department shall notify the  
 3 applicant in writing within 30 90 days of receipt of a  
 4 correct and complete application (or a combination of  
 5 applications) if it determines that an environmental impact  
 6 statement and fee is required.

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

24 (3) The department and the applicant may determine by  
 25 agreement the estimated cost of any facility for purposes of

1 computing the amount of the fee to be paid to the department  
 2 by the applicant. The department may contract with an  
 3 applicant for:

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

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

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

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

21 (5) No fee as prescribed by this section may be  
 22 assessed against an applicant for a permit or approval if  
 23 the applicant has also filed an application for a  
 24 certificate of environmental compatibility or public need  
 25 pursuant to the Montana Major Facility Siting Act, and the

1 appropriation or use of water involved in the application(s)  
2 for permit or approval has been or will be studied by the  
3 department pursuant to that act.

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

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

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

16 Section 5. Section 85-2-236, MCA, is amended to read:

17 "85-2-236. Certificate of water right. (1) When a  
18 final decree is entered, the water judge shall send a copy  
19 to the department. The department shall on the basis of the  
20 final decree issue a certificate of water right to each  
21 person decreed an existing right. The original of the  
22 certificate shall be sent to the ~~county clerk and recorder~~  
23 ~~of the county where the point of diversion or place of use~~  
24 ~~is located for recordation~~ person to whom the right is  
25 decreed. The department shall keep a copy of the certificate

1 in its office in Helena. After ~~recordation~~ ~~the clerk and~~  
2 ~~recorder shall send the certificate to the person to whom~~  
3 ~~the right is decreed~~.

4 (2) ~~The department shall provide to the county clerk~~  
5 ~~and recorder of the county wherein the point of diversion or~~  
6 ~~place of use is located quarterly reports and an annual~~  
7 ~~summary report of all certificates of water right issued by~~  
8 ~~the department within the county."~~

9 Section 6. Section 85-2-302, MCA, is amended to read:

10 "85-2-302. Application for permit. Except as otherwise  
11 provided in (1) ~~and (2) through (3)~~ of 85-2-306, a person  
12 may not appropriate water or commence construction of  
13 diversion, impoundment, withdrawal, or distribution works  
14 therefor except by applying for and receiving a permit from  
15 the department. The application shall be made on a form  
16 prescribed by the department. The department shall make the  
17 forms available through its offices and the offices of the  
18 county clerk and recorders. The department shall return a  
19 defective application for correction or completion together  
20 with the reasons for returning it. An application does not  
21 lose priority of filing because of defects, if the  
22 application is corrected, completed, and refiled with the  
23 department within 30 days after its return to the applicant  
24 or within a further time as the department may allow. If an  
25 application is not corrected and completed within 30 days or

1 within a further time as the department allows, up to ±8 3  
 2 months, the priority date of the application shall be the  
 3 date of refiling the application with the corrections with  
 4 the department. An application not corrected within ±8 3  
 5 months shall be terminated."

6 Section 7. Section 85-2-303, MCA, is amended to read:

7 "85-2-303. Permit for conversion of nonproductive oil  
 8 or gas well. A person who desires to convert a nonproductive  
 9 oil or gas well to a water well ~~may do so immediately but~~  
 10 shall file a notice of completion or apply for a permit,  
 11 depending on the maximum yield appropriation of the well, as  
 12 otherwise provided in this chapter. The date of  
 13 appropriation shall be the date of filing the notice of  
 14 completion or the application for a permit."

15 Section 8. Section 85-2-306, MCA, is amended to read:

16 "85-2-306. Exceptions to permit requirements. (1)  
 17 Outside the boundaries of a controlled groundwater area, a  
 18 permit is not required before appropriating groundwater by  
 19 means of a well or developed spring with a maximum  
 20 appropriation of less than 100 gallons per minute. Within 60  
 21 days of completion of the well or developed spring and  
 22 appropriation of the groundwater for beneficial use, the  
 23 appropriator shall file a notice of completion with the  
 24 department on a form provided by the department at its  
 25 offices and at the offices of the county clerk and

1 recorders. Upon receipt of the notice, the department shall  
 2 review the notice and may, before issuing a certificate of  
 3 water right, return a defective notice for correction or  
 4 completion, together with the reasons for returning it. A  
 5 notice does not lose priority of filing because of defects,  
 6 if the notice is corrected, completed, and refiled with the  
 7 department within 30 days or within a further time as the  
 8 department may allow, not to exceed 6 months. If a notice is  
 9 not corrected and completed within the time allowed, the  
 10 priority date of appropriation shall be the date of refiling  
 11 a correct and complete notice with the department. A  
 12 certificate of water right may not be issued until a correct  
 13 and complete notice has been filed with the department. The  
 14 original of the certificate shall be sent to the county  
 15 clerk and recorder in the county where the point of  
 16 diversion or place of use is located for recordation. The  
 17 department shall keep a copy of the certificate in its  
 18 office in Helena. After recordation, the clerk and recorder  
 19 shall send the certificate to the appropriator. The date of  
 20 filing of the notice of completion is the date of priority  
 21 of the right.

22 (2) An appropriator of groundwater by means of a well  
 23 or developed spring, first put to beneficial use between  
 24 January 1, 1962, and July 1, 1973, who did not file a notice  
 25 of completion, as required by laws in force prior to April



14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection (1) of this section, with the department to perfect the water right. ~~The filing of a claim of existing water right pursuant to 85-2-221 is sufficient notice of completion under this subsection.~~ The priority date of the appropriation shall be the date of the filing of a notice as provided in subsection (1) of this section ~~or the date of the filing of the claim of existing water right.~~ An appropriation under this subsection is an existing right, and a permit is not required; however, the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that for an appropriation of less than 100 gallons per minute, the department shall issue a certificate of water right.

(3) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is ~~less than 30 acre-feet per year and~~ is from a source other than a perennial flowing stream, and the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger. As used in this subsection, a perennial flowing stream means a stream which historically

has flowed continuously at all seasons of the year, during dry as well as wet years. However, within 60 days after constructing the impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. Upon receipt of a correct and complete application for a stockwater provisional permit, the department shall then automatically issue a provisional permit. If the department determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit subject to such terms, conditions, restrictions, or limitations it considers necessary to protect the rights of other appropriators.

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

Section 9. Section 85-2-307, MCA, is amended to read:

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

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

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

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

21 Section 10. Section 85-2-308, MCA, is amended to read:

22 "85-2-308. Objections. (1) An objection to an  
 23 application must be filed by the date specified by the  
 24 department under 85-2-307(2).

25 (2) The objection must state the name and address of

1 the objector and facts tending to show that there are no  
 2 unappropriated waters in the proposed source, that the  
 3 proposed means of appropriation are inadequate, that the  
 4 property, ~~PROPERTY, water rights, or interests, OR INTERESTS~~  
 5 of the objector would be adversely affected by the proposed  
 6 appropriation, ~~or the objector may state any other~~  
 7 ~~objections to the proposed appropriation he considers~~  
 8 ~~pertinent that the proposed use of water is not a beneficial~~  
 9 ~~use, or that the proposed use will interfere unreasonably~~  
 10 ~~with other planned uses or developments for which a permit~~  
 11 ~~has been issued or for which water has been reserved."~~

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

13 "85-2-311. Criteria for issuance of permit. The  
 14 department shall issue a permit if:

15 (1) there are unappropriated waters in the source of  
 16 supply:

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

19 (b) in the amount the applicant seeks to appropriate;  
 20 and

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

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

25 (3) the proposed means of diversion, construction, and

1 operation of the appropriation works are adequate;

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

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

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

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

13 Section 12. Section 85-2-312, MCA, is amended to read:

14 "85-2-312. Terms of permit. (1) The department may  
15 issue a permit for less than the amount of water requested,  
16 but in no case may it issue a permit for more water than is  
17 requested or than can be beneficially used without waste for  
18 the purpose stated in the application. The department may  
19 require modification of plans and specifications for the  
20 appropriation or related diversion or construction. It may  
21 issue a permit subject to terms, conditions, restrictions,  
22 and limitations it considers necessary to protect the rights  
23 of other appropriators, and it may issue temporary or  
24 seasonal permits. A permit shall be issued subject to  
25 existing rights and any final determination of those rights

1 made under this chapter.

2 (2) The department may limit the time for commencement  
3 of the appropriation works, completion of construction, and  
4 actual application of the water to the proposed beneficial  
5 use. In fixing those time limits, the department shall  
6 consider the cost and magnitude of the project, the  
7 engineering and physical features to be encountered, and, on  
8 projects designed for gradual development and gradually  
9 increased use of water, the time reasonably necessary for  
10 that gradual development and increased use. For good cause  
11 shown by the permittee, the department may in its discretion  
12 reasonably extend time limits.

13 (3) The original of the permit shall be sent to the  
14 ~~county clerk and recorder in the county where the point of~~  
15 ~~diversion or place of use is located for recordation~~  
16 ~~permittee~~, and a copy shall be kept in the office of the  
17 department in Helena. ~~After recordation, the clerk and~~  
18 ~~recorder shall send the permit to the permittee.~~

19 (4) The department shall provide to the county clerk  
20 and recorder of the county wherein the point of diversion or  
21 place of use is located quarterly reports and an annual  
22 summary report of all water right permits, certificates, and  
23 change approvals issued by the department within the  
24 county."

25 Section 13. Section 85-2-314, MCA, is amended to read:

"85-2-314. Revocation or modification of permit. If the work on an appropriation is not commenced, prosecuted, or completed within the time stated in the permit or an extension thereof or if the water is not being applied to the beneficial use contemplated in the permit or if the permit is otherwise not being followed, the department may, after notice, require the permittee to show cause why the permit should not be modified or revoked. If the permittee fails to show sufficient cause, the department may modify or revoke the permit."

Section 14. Section 85-2-315, MCA, is amended to read:

"85-2-315. Certificate of water right. (1) Upon actual application of water to the proposed beneficial use within the time allowed, the permittee shall notify the department that the appropriation has been properly completed. The department may then inspect the appropriation, and if it determines that the appropriation has been completed in substantial accordance with the permit, it shall issue the permittee a certificate of water right. The original of the certificate shall be sent to the ~~county clerk and recorder in the county wherein the point of diversion or place of use is located for recordation~~ permitter, and a duplicate shall be kept in the office of the department in Helena. After ~~recordation, the clerk and recorder shall send the certificate to the appropriator~~

(2) ~~Except as provided in 85-2-313, a certificate of water right in a particular source may not be issued prior to a general determination under part 2 of this chapter of existing rights in that source. The department shall provide to the county clerk and recorder of the county wherein the point of diversion or place of use is located quarterly reports and an annual summary report of all certificates of water right issued by the department within the county.~~

Section 15. Section 85-2-402, MCA, is amended to read:

"85-2-402. Changes in appropriation rights. (1) An appropriator may not change the place of diversion, place of use, purpose of use, or place of storage except as permitted under this section and approved by the department.

(2) The department shall approve the proposed change if it determines that the proposed change will not adversely affect the rights of other persons. If the department determines that the proposed change might adversely affect the rights of other persons, notice of the proposed change shall be given in accordance with 85-2-307. If the department determines that an objection filed by a person whose rights may be affected states a valid objection to the proposed change, the department shall hold a hearing thereon prior to its approval or denial of the proposed change. Objections shall meet the requirements of 85-2-308(2), and hearings shall be held in accordance with 85-2-309.

(3) An appropriator of more than 15 cubic feet per second may not change the purpose of use of an appropriation right from an agricultural or irrigation use to an industrial use.

(4) The department may approve a change subject to such terms, conditions, restrictions, and limitations it considers necessary to protect the rights of other appropriators, including limitations on the time for completion of the change.

(5) If a change is not completed as approved by the department or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

~~(6) Without obtaining prior approval from the department, an appropriator may not sever all or any part of an appropriation right from the land to which it is appurtenant, sell the appropriation right for other purposes or to other lands, or make the appropriation right appurtenant to other lands. The department shall approve the proposed change if it determines that the proposed change will not adversely affect the water rights of other persons.~~

~~If the department determines that the proposed change might adversely affect the water rights of other persons, notice of the proposed change must be given in accordance with 85-2-307. If the department then determines that an objection filed by a person whose water rights may be affected states a valid objection to the proposed change, the department shall hold a hearing thereon prior to its approval or denial of the proposed change. Objections must meet the requirements of 85-2-308, and hearings must be held in accordance with 85-2-309.~~

~~(7) The original of a change approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.~~

~~(8) A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section."~~

Section 16. Section 85-2-403, MCA, is amended to read:

"85-2-403. Transfer of appropriation right. (1) The right to use water under a permit or certificate of water right shall pass with a conveyance of the land or transfer by operation of law, unless specifically exempted therefrom. All transfers of interests in appropriation rights shall be without loss of priority.

~~(2) The person receiving the appropriation interest shall file with the department notice of the transfer on a form prescribed by the department, which must include but is not limited to the notarized signatures of the transferor and the transferee.~~

~~(3) Without obtaining prior approval from the department, an appropriator may not sever all or any part of an appropriation right from the land to which it is appurtenant, sell the appropriation right for other purposes or to other lands, or make the appropriation right appurtenant to other lands. The department shall approve the proposed change if it determines that the proposed change will not adversely affect the rights of other persons; if the department determines that the proposed change might adversely affect the rights of other persons, notice of the proposed change shall be given in accordance with 85-2-307; if the department then determines that an objection filed by a person whose rights may be affected states a valid objection to the proposed change, the department shall hold a hearing thereon prior to its approval or denial of the proposed change. Objections shall meet the requirements of 85-2-308(2) and hearings shall be held in accordance with 85-2-309. The department shall send an acknowledgment of receipt of a filed transfer to the transferor and the transferee and a duplicate must be kept in the office of~~

~~the department in Helena~~

~~NEW SECTION.~~ Section 17. Permit action in highly appropriated basins or subbasins. (1) The legislature may, by law, preclude permit applications, or the department may by rule reject permit applications or modify or condition permits issued in a highly appropriated basin or subbasin.

(2) A rule may be adopted under this section only upon a petition signed by at least 25% or 10, whichever is less, of the users of water in the source of supply within a basin or subbasin. The petition must be in a form as prescribed by the department and must allege facts showing that throughout or at certain times of the year or for certain beneficial uses:

(a) there are no unappropriated waters in the source of supply;

(b) the rights of prior appropriators will be adversely affected; or

(c) further uses will interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved.

(3) Within 60 days after submission of a petition, the department shall:

(a) deny the petition in writing, stating its reasons for denial;

(b) inform the petitioners that the department must

1 study the allegations further before denying or proceeding  
2 further with the petition; or

3 (c) initiate rulemaking proceedings in accordance with  
4 2-4-302 through 2-4-305.

5 (4) Title 2, chapter 34, parts 1 through 4, govern  
6 rulemaking proceedings conducted under this section, except  
7 that in addition to the notice requirements of those parts,  
8 the department notice of the rulemaking hearing must be  
9 published at least once in each week for 3 successive weeks,  
10 not less than 30 days before the date of the hearing, in a  
11 newspaper of general circulation in the county or counties  
12 in which the source is located. The department shall serve  
13 by mail a copy of the notice not less than 30 days before  
14 the hearing upon each person or public agency known from the  
15 examination of the records of the department to be a  
16 claimant, appropriator, or permit holder of water in the  
17 source.

18 **NEW\_SECTION.** Section 18. Codification instruction.  
19 Section 17 is intended to be codified as an integral part of  
20 Title 85, chapter 2, and the provisions of Title 85, chapter  
21 2, apply to section 17.

22 **NEW\_SECTION.** Section 19. Severability. If a part of  
23 this act is invalid, all valid parts that are severable from  
24 the invalid part remain in effect. If a part of this act is  
25 invalid in one or more of its applications, the part remains

1 in effect in all valid applications that are severable from  
2 the invalid applications.

3 **NEW\_SECTION.** Section 20. Effective date. This act is  
4 effective on passage and approval.

-End-