

SENATE BILL NO. 401

INTRODUCED BY BOYLAN, HAGER,  
RAMIREZ, DONALDSON, IVERSON

IN THE SENATE

February 11, 1983	Introduced and referred to Committee on Agriculture, Livestock and Irrigation.
February 19, 1983	Committee recommend bill do pass as amended. Report adopted.
February 21, 1983	Bill printed and placed on members' desks.
February 22, 1983	Second reading, do pass.
February 23, 1983	On motion rules suspended. Bill placed on calendar for third reading this day.
	Third reading, passed. Ayes, 49; Noes, 0. Transmitted to House.

IN THE HOUSE

February 28, 1983	Introduced and referred to Committee on Agriculture, Livestock and Irrigation.
March 21, 1983	Committee recommend bill be concurrent in as amended. Report adopted.
	Statement of Intent attached.
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 and Statement of Intent.
April 8, 1983	Second reading, amendments not concurred in.
April 11, 1983	On motion, Free Conference Committee requested and appointed.
April 20, 1983	Free Conference Committee reported.  Second reading, report adopted.
April 21, 1983	Third reading, report adopted.  Free Conference Committee report adopted by House.  Sent to enrolling.  Reported correctly enrolled.

1 *Amended* BILL NO. *401*  
2 INTRODUCED BY *Boyle Hager Remmer*  
3 *McDonald Jones*  
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE  
5 CENTRAL AND LOCAL RECORDATION OF WATER RIGHT TRANSFERS;  
6 VALIDATING PREVIOUS TRANSFERS MADE WITHOUT APPROVAL OF THE  
7 DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; AMENDING  
8 SECTION 85-2-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE  
9 DATE."

10  
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 ~~NEW\_SECTION.~~ Section 1. Purpose. The purpose of  
13 [sections 1 through 6] is to facilitate the maintenance of a  
14 reliable record of water right ownership on both the state  
15 and local levels by requiring that water right transfers be  
16 recorded with the county clerk and recorder and that the  
17 county clerk and recorder notify the department and the  
18 water court of each transfer recorded.

19 ~~NEW\_SECTION.~~ Section 2. Definition. As used in  
20 [sections 1 through 6], "water right" means the right to use  
21 water as documented by a claim to an existing right, a  
22 permit, or a certificate of water right.

23 ~~NEW\_SECTION.~~ Section 3. Water right transfer  
24 certificate. (1) The chief water judge and the department  
25 shall prescribe the form of the water right transfer

1 certificate.

2 (2) The department shall provide an adequate supply of  
3 such forms to each county clerk and recorder in the state.

4 ~~NEW\_SECTION.~~ Section 4. Recordation. (1) Except in  
5 the case of a transfer of real property that is served by a  
6 public service water supply:

7 (a) the parties to a transfer of real property or  
8 their agents or representatives shall record with the county  
9 clerk and recorder a water right transfer certificate; and

10 (b) no instrument or deed evidencing a transfer of  
11 real property, whether or not there are water rights  
12 associated with the realty, may be accepted for recordation  
13 until a water right transfer certificate has been received  
14 by the county clerk and recorder. If no water rights are  
15 associated with the property, the certificate must state  
16 that fact.

17 (2) The county clerk and recorder shall cause a  
18 permanent record of the water right transfer certificate to  
19 be made.

20 (3) The county clerk and recorder shall send a copy of  
21 the water right transfer certificate to the department and  
22 to the office of the chief water judge.

23 ~~NEW\_SECTION.~~ Section 5. Effect of recordation. (1)  
24 Failure to comply with [sections 1 through 6] does not  
25 affect the validity or effectiveness of an instrument or

1 deed as between the parties to it.

2 (2) The recordation of the water right transfer  
3 certificate with the county clerk and recorder is  
4 constructive notice of the content thereof.

5 ~~NEW SECTION.~~ Section 6. Fee. (1) The chief water  
6 judge and the department shall prescribe a fee that must  
7 cover the cost of recordation by the county clerk and  
8 recorder and the department. The fee must be paid at the  
9 time of recordation of the water right transfer certificate.

10 (2) The county clerk and recorder shall retain a  
11 portion of the fee equal to the amount necessary to cover  
12 the cost of recording the document. The remainder of the  
13 fee must be forwarded to the department and must be  
14 deposited in the water right appropriation account provided  
15 for in 85-2-318.

16 Section 7. Section 85-2-403, MCA, is amended to read:

17 "85-2-403. Transfer of appropriation right. (1) The  
18 right to use water under a permit or certificate of water  
19 right shall pass with a conveyance of the land or transfer  
20 by operation of law, unless specifically exempted therefrom.  
21 All transfers of interests in appropriation rights shall be  
22 without loss of priority.

23 ~~(2) The person receiving the appropriation interest~~  
24 ~~shall file with the department notice of the transfer on a~~  
25 ~~form prescribed by the department.~~

1 ~~(3)(2)~~ Without obtaining prior approval from the  
2 department, an appropriator may not sever all or any part of  
3 an appropriation right from the land to which it is  
4 appurtenant, sell the appropriation right for other purposes  
5 or to other lands, or make the appropriation right  
6 appurtenant to other lands. The department shall approve the  
7 proposed change if it determines that the proposed change  
8 will not adversely affect the rights of other persons. If  
9 the department determines that the proposed change might  
10 adversely affect the rights of other persons, notice of the  
11 proposed change shall be given in accordance with 85-2-307.  
12 If the department then determines that an objection filed by  
13 a person whose rights may be affected states a valid  
14 objection to the proposed change, the department shall hold  
15 a hearing thereon prior to its approval or denial of the  
16 proposed change. Objections shall meet the requirements of  
17 85-2-308(2) and hearings shall be held in accordance with  
18 85-2-309.

19 ~~(3) Any conveyance or other transfer of a water right~~  
20 ~~made before [the effective date of this section] is~~  
21 ~~effective and valid as to the parties to the conveyance or~~  
22 ~~transfer and as to the state of Montana and its political~~  
23 ~~subdivisions, notwithstanding any failure by the parties to~~  
24 ~~give notice to or obtain approval from the department~~  
25 ~~pursuant to subsections (1) and (2). This subsection applies~~

1 ~~retroactively, within the meaning of 1-2-109, to transfers~~  
2 ~~of water rights made before [the effective date of this~~  
3 ~~section]. It does not apply to transfers made after [the~~  
4 ~~effective date of this section]."~~

5 NEW\_SECTION Section 8. Codification instruction.  
6 Sections 1 through 6 are intended to be codified as an  
7 integral part of Title 85, chapter 2, and the provisions of  
8 Title 85, chapter 2, apply to sections 1 through 6.

9 NEW\_SECTION Section 9. Effective date. Section 7 is  
10 effective on passage and approval.

-End-

Approved by Committee  
on Agriculture Livestock  
& Irrigation

## SENATE BILL NO. 401

INTRODUCED BY BOYLAN, HAGER,

RAMIREZ, DONALDSON, IVERSON

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE  
CENTRAL AND LOCAL RECORDATION OF WATER RIGHT TRANSFERS;  
VALIDATING PREVIOUS TRANSFERS MADE WITHOUT APPROVAL OF THE  
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; AMENDING  
SECTION 85-2-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE  
DATE."

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

NEW SECTION. Section 1. Purpose. The purpose of  
[sections 1 through 6] is to facilitate the maintenance of a  
reliable record of water right ownership on both the state  
and local levels by requiring that water right transfers be  
recorded with the county clerk and recorder and that the  
county clerk and recorder notify the department and the  
water court of each transfer recorded.

NEW SECTION. Section 2. Definition. As used in  
[sections 1 through 6], "water right" means the right to use  
water as documented by a claim to an existing right, a  
permit, or a certificate of water right.

NEW SECTION. Section 3. Water right transfer  
certificate. (1) The chief water judge and the department

shall prescribe the form of the water right transfer  
certificate.

(2) The department shall provide an adequate supply of  
such forms to each county clerk and recorder in the state.  
NEW SECTION. Section 4. Recordation. (1) Except in  
the case of a transfer of real property that is served by a  
public service water supply:

(a) the parties to a transfer of real property or  
their agents or representatives shall record with the county  
clerk and recorder a water right transfer certificate; and

(b) no instrument or deed evidencing a transfer of  
real property, ~~whether-or-not-there-are~~ IF water rights ARE  
associated with the realty, may be accepted for recordation  
until a water right transfer certificate has been received  
by the county clerk and recorder. If no water rights are  
associated with the property, the REALTY TRANSFER  
certificate EXECUTED UNDER 15-7-305 must state that fact.

(2) The county clerk and recorder shall cause a  
permanent record of the water right transfer certificate to  
be made.

(3) The county clerk and recorder shall send a copy of  
the water right transfer certificate to the department and  
to the office of the chief water judge.

NEW SECTION. Section 5. Effect of recordation. (1)  
Failure to comply with [sections 1 through 6] does not

1 affect the validity or effectiveness of an instrument or  
2 deed as between the parties to it.

3 (2) The recordation of the water right transfer  
4 certificate with the county clerk and recorder is  
5 constructive notice of the content thereof.

6 ~~NEW SECTION.~~ Section 6. Fee. (1) The chief water  
7 judge and the department shall prescribe a fee that must  
8 cover the cost of recordation--by--the--county--clerk--and  
9 recorder--and the department. The fee must be paid at the  
10 time of recordation of the water right transfer certificate.

11 (2) The county clerk and recorder shall retain--a  
12 portion--of--the--fee--equal--to--the--amount--necessary--to--cover  
13 the--cost--of--recording--the--documents--The--remainder--of--the  
14 fee--must--be--forwarded--

15 ~~(A) COLLECT THE FEE REQUIRED UNDER SUBSECTION (1) AND~~  
16 ~~FORWARD IT~~ to the department and must ~~IT~~ be deposited in the  
17 water right appropriation account provided for in 85-2-318;  
18 AND

19 ~~(B) CHARGE AND COLLECT A RECORDING FEE AS PROVIDED FOR~~  
20 ~~IN 1-4-2632 FOR RECORDING THE DOCUMENT.~~

21 Section 7. Section 85-2-403, MCA, is amended to read:

22 "85-2-403. Transfer of appropriation right. (1) The  
23 right to use water under a permit or certificate of water  
24 right shall pass with a conveyance of the land or transfer  
25 by operation of law, unless specifically exempted therefrom.

1 All transfers of interests in appropriation rights shall be  
2 without loss of priority.

3 ~~{2}--The person receiving the appropriation interest~~  
4 ~~shall file with the department notice of the transfer on a~~  
5 ~~form prescribed by the department.~~

6 ~~{3}~~(2) 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.

24 ~~(3) Any conveyance or other transfer of a water right~~  
25 ~~made before [the effective date of this section] is~~

1 effective and valid as to the parties to the conveyance or  
2 transfer and as to the state of Montana and its political  
3 subdivisions; notwithstanding any failure by the parties to  
4 give notice to or obtain approval from the department  
5 pursuant to subsections (1) and (2). This subsection applies  
6 retroactively, within the meaning of 1-2-109, to transfers  
7 of water rights made before [the effective date of this  
8 section]; it does not apply to transfers made after [the  
9 effective date of this section]."

10 NEW SECTION Section 8. Codification instruction.  
11 Sections 1 through 6 are intended to be codified as an  
12 integral part of Title 85, chapter 2, and the provisions of  
13 Title 85, chapter 2, apply to sections 1 through 6.

14 NEW SECTION, Section 9. Effective date. Section 7 is  
15 effective on passage and approval.

-End-



FREE CONFERENCE COMMITTEE  
ON SENATE BILL NO. 401

(Report No. 1, April 18, 1983)

MR. PRESIDENT AND SPEAKER OF THE HOUSE:

We, your Free Conference Committee on Senate Bill No. 401 met April 18, 1983, and considered:

House Agriculture Committee Amendments to the third reading, (blue copy), dated March 18, 1983; and

House Committee of the Whole Amendments to third reading (blue copy) dated March 22, 1983; and recommend as follows:

That the Senate accede to the House Agriculture Committee amendments numbers 1 through 4 and 6 through 10, dated March 18, 1983; and

That the House recede from House Agriculture Committee amendment No. 5, dated March 18, 1983; and

That the Senate accede to House Committee of the Whole Statement of Intent amendment dated March 22, 1983; and

That Senate Bill No. 401 be further amended as specified in CLERICAL INSTRUCTION NO. 1.

That the reference copy of Senate Bill No. 401 read as specified in the CLERICAL INSTRUCTIONS:

And, that the Free Conference Committee Report on Senate Bill No. 401 be adopted.

CLERICAL INSTRUCTIONS:

1. Page 2, line 6.

Following: "Recordation."

Strike: Subsection (1) in its entirety

Insert: "(1) The parties to a transfer of a water right, or their agents or representatives, shall record with the county clerk and recorder a water right transfer certificate.


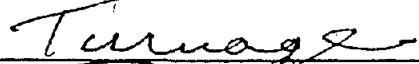
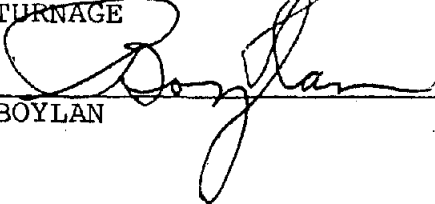
(2) Except in the case of a transfer of real property served by a public service water supply, when any person presents

(Continued)



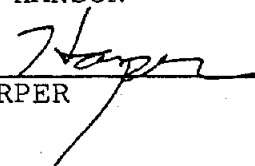
April 18 1983

for recording a deed or other instrument evidencing a transfer of real property, the Realty Transfer Certificate shall note whether or not the transfer includes a transfer of water rights. If the Realty Transfer Certificate notes a transfer of water rights, the Clerk and Recorder shall provide such person the form prescribed in this act for the transfer of water rights. The recording of the deed or other instrument shall not be delayed because of the transfer of the water rights."

FOR THE SENATE:

  
HAGER, Chairman  
  
TURNAGE  
  
BOYLAN

FOR THE HOUSE:

  
SPAETH, Chairman  
  
M. HANSON  
  
HARPER

## SENATE BILL NO. 401

INTRODUCED BY BOYLAN, HAGER,  
RAMIREZ, DONALDSON, IVERSON

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE  
CENTRAL AND LOCAL RECORDATION OF WATER RIGHT TRANSFERS;  
VALIDATING PREVIOUS TRANSFERS MADE WITHOUT APPROVAL OF THE  
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; AMENDING  
SECTION 85-2-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE  
DATE."

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

NEW SECTION. Section 1. Purpose. The purpose of  
[sections 1 through 6] is to facilitate the maintenance of a  
reliable record of water right ownership on both the state  
and local levels by requiring that water right transfers be  
recorded with the county clerk and recorder and that the  
county clerk and recorder notify the department and the  
water court of each transfer recorded.

NEW SECTION. Section 2. Definition. As used in  
[sections 1 through 6], "water right" means the right to use  
water as documented by a claim to an existing right, a  
permit, or a certificate of water right.

NEW SECTION. Section 3. Water right transfer  
certificate. (1) The chief water judge and the department

shall prescribe the form of the water right transfer  
certificate.

(2) The department shall provide an adequate supply of  
such forms to each county clerk and recorder in the state.

NEW SECTION. Section 4. Recordation. (1) Except in  
the case of a transfer of real property that is served by a  
public service water supply:

(a) the parties to a transfer of real property or  
their agents or representatives shall record with the county  
clerk and recorder a water right transfer certificate; and

(b) no instrument or deed evidencing a transfer of  
real property, ~~whether or not there are~~ IF water rights ARE  
associated with the realty, may be accepted for recordation  
until a water right transfer certificate has been received  
by the county clerk and recorder. If no water rights are  
associated with the property, the REALTY TRANSFER  
certificate EXECUTED UNDER 15-7-305 must state that fact.

(2) The county clerk and recorder shall cause a  
permanent record of the water right transfer certificate to  
be made.

(3) The county clerk and recorder shall send a copy of  
the water right transfer certificate to the department and  
to the office of the chief water judge.

NEW SECTION. Section 5. Effect of recordation. (1)  
Failure to comply with [sections 1 through 6] does not

1 affect the validity or effectiveness of an instrument or  
2 dead as between the parties to it.

3 (2) The recordation of the water right transfer  
4 certificate with the county clerk and recorder is  
5 constructive notice of the content thereof.

6 NEW SECTION. Section 6. Fee. (1) The chief water  
7 judge and the department shall prescribe a fee that must  
8 cover the cost of recordation--by--the--county--clerk--and  
9 recorder--and the department. The fee must be paid at the  
10 time of recordation of the water right transfer certificate.

11 (2) The county clerk and recorder shall retain--a  
12 portion--of--the--fee--equal--to--the--amount--necessary--to--cover  
13 the--cost--of--recording--the--documents--The--remainder--of--the  
14 fee--must--be--forwarded--

15 (A1. COLLECT THE FEE REQUIRED UNDER SUBSECTION (1) AND  
16 FORWARD IT to the department and must IT be deposited in the  
17 water right appropriation account provided for in 85-2-318;  
18 AND

19 (B1. CHARGE AND COLLECT A RECORDING FEE AS PROVIDED FOR  
20 IN 7-4-2632 FOR RECORDING THE DOCUMENT.

21 Section 7. Section 85-2-403, MCA, is amended to read:

22 "85-2-403. Transfer of appropriation right. (1) The  
23 right to use water under a permit or certificate of water  
24 right shall pass with a conveyance of the land or transfer  
25 by operation of law, unless specifically exempted therefrom.

1 All transfers of interests in appropriation rights shall be  
2 without loss of priority.

3 ~~(2)--The person receiving the appropriation interest~~  
4 ~~shall file with the department notice of the transfer on a~~  
5 ~~form prescribed by the department.~~

6 ~~(3)(2)~~ 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.

24 (3) Any conveyance or other transfer of a water right  
25 made before [the effective date of this section] is

1 ~~effective and valid as to the parties to the conveyance or~~  
2 ~~transfer and as to the state of Montana and its political~~  
3 ~~subdivisions, notwithstanding any failure by the parties to~~  
4 ~~give notice to or obtain approval from the department~~  
5 ~~pursuant to subsections (1) and (2). This subsection applies~~  
6 ~~retroactively, within the meaning of 1-2-109, to transfers~~  
7 ~~of water rights made before [the effective date of this~~  
8 ~~section]; it does not apply to transfers made after [the~~  
9 ~~effective date of this section]."~~

10 ~~NEW SECTION~~ Section 8. Codification instruction.  
11 Sections 1 through 6 are intended to be codified as an  
12 integral part of Title 85, chapter 2, and the provisions of  
13 Title 85, chapter 2, apply to sections 1 through 6.

14 ~~NEW SECTION~~ Section 9. Effective date. Section 7 is  
15 effective on passage and approval.

-End-

HOUSE AGRICULTURE COMMITTEE

SB 401  
AMENDMENTS

MARCH 18, 1983

~~Page 2 of 3~~

- 1) Title, line 7.  
Strike: "VALIDATING PREVIOUS"  
Insert: "PROVIDING THAT"
- 2) Title, line 7.  
Following: "WITHOUT"  
Insert: "PRIOR"
- 3) Title, line 8.  
Following: "CONSERVATION"  
Insert: "MUST BE APPROVED AFTER THE TRANSFER"
- 4) Page 2, line 1.  
Following: "form"  
Insert: "and content"
- 5) Page 2, line 5.  
Following: "Recordation."  
Strike: Subsection (1) in its entirety  
Insert: "(1) The parties to a transfer of a water right, or their agents or representatives, shall record with the county clerk and recorder a water right transfer certificate.

(2) Except in the case of a transfer of real property served by a public service water supply, no deed or other instrument evidencing a transfer of real property may be accepted for recordation if water rights are associated with the property until a water right transfer certificate has been received by the county clerk and recorder. If no water rights are associated with the property or if associated water rights are not transferred with the property the realty transfer certificate executed under 15-7-305 must state that fact."

Renumber subsequent subsections.

- 6) Page 3, line 6.  
Following: "The"  
Insert: "board of natural resources and conservation"  
Strike: remainder of line 6
- 7) Page 3, line 7.  
Strike: "judge and the department" at the beginning of line 7  
Following: "shall"  
Insert: "by rule"
- 8) Page 3, line 9.  
Following: "department"  
Insert: "in processing the copy of the transfer certificate"

  
J. Lynn Jacobson  
CHAIRMAN

HOUSE AGRICULTURE COMMITTEE

SB 401  
AMENDMENTS

~~Page 3 of 3~~

MARCH 18, 1983

9) Page 3, line 20.

Strike: "7-4-2632"

Insert: "7-4-2631"

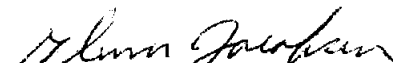
10) Page 4, line 24.

Following: line 23

Strike: line 24 through line 9 on page 5

Insert: "(3) Failure to comply with the provisions of subsection (2) does not render a conveyance or reservation of a water right void, but the right may not be used until the department has approved the change. This subsection applies retroactively, within the meaning of 1-2-109, to a conveyance or reservation made after July 1, 1973."

AND AS AMENDED  
BE CONCURRED IN

  
REP. GLENN JACOBSEN, CHAIRMAN

March 22, 1983

HOUSE COMMITTEE OF THE WHOLE AMENDMENTS TO SENATE BILL 401,  
THIRD READING COPY (BLUE)

Statement of Intent  
Senate Bill 401

Senate Bill 401 requires a statement of intent because it provides that the Board of Natural Resources and Conservation must by rule prescribe a fee for the processing of a copy of a water right transfer certificate. It is the intent of the legislature that the board study the cost of processing such certificates and set the fee commensurate with the department's cost in processing a certificate. In making its cost analysis study the board should consult with the department and obtain the department's opinion as to what the department's costs will be. The fee may not be set so high that it generates revenue in excess of actual costs.

ADOPT



## 1 STATEMENT OF INTENT

## 2 SENATE BILL 401

3

4 Senate Bill 401 requires a statement of intent because  
5 it provides that the Board of Natural Resources and  
6 Conservation must by rule prescribe a fee for the processing  
7 of a copy of a water right transfer certificate. It is the  
8 intent of the legislature that the board study the cost of  
9 processing such certificates and set the fee commensurate  
10 with the department's cost in processing a certificate. In  
11 making its cost analysis study the board should consult with  
12 the department and obtain the department's opinion as to  
13 what the department's costs will be. The fee may not be set  
14 so high that it generates revenue in excess of actual costs.

REFERENCE BILL

SB 401

## SENATE BILL NO. 401

INTRODUCED BY BOYLAN, HAGER,

RAMIREZ, DONALDSON, IVERSON

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE CENTRAL AND LOCAL RECORDATION OF WATER RIGHT TRANSFERS; ~~VALIDATING PREVIOUS PROVIDING THAT~~ TRANSFERS MADE WITHOUT PRIOR APPROVAL OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION ~~MUST BE APPROVED AFTER THE TRANSFER~~; AMENDING SECTION 85-2-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. Section 1. Purpose. The purpose of [sections 1 through 6] is to facilitate the maintenance of a reliable record of water right ownership on both the state and local levels by requiring that water right transfers be recorded with the county clerk and recorder and that the county clerk and recorder notify the department and the water court of each transfer recorded.

NEW SECTION. Section 2. Definition. As used in [sections 1 through 6], "water right" means the right to use water as documented by a claim to an existing right, a permit, or a certificate of water right.

NEW SECTION. Section 3. Water right transfer

certificate. (1) The chief water judge and the department shall prescribe the form AND CONTENT of the water right transfer certificate.

(2) The department shall provide an adequate supply of such forms to each county clerk and recorder in the state.

NEW SECTION. Section 4. Recordation. (1) ~~Except in the case of a transfer of real property that is served by a public service water supply,~~

~~(a) the parties to a transfer of real property or their agents or representatives shall record with the county clerk and recorder a water right transfer certificate; and~~

~~(b) no instrument or deed evidencing a transfer of real property whether or not there are if water rights are associated with the realty may be accepted for recordation until a water right transfer certificate has been received by the county clerk and recorder if no water rights are associated with the property the REALTY TRANSFER certificate EXECUTED UNDER 15-7-305 must state that facts THE PARTIES TO A TRANSFER OF A WATER RIGHT OR THEIR AGENTS OR REPRESENTATIVES SHALL RECORD WITH THE COUNTY CLERK AND RECORDER A WATER RIGHT TRANSFER CERTIFICATE.~~

(2) EXCEPT IN THE CASE OF A TRANSFER OF REAL PROPERTY SERVED BY A PUBLIC SERVICE WATER SUPPLY, NO DEED OR OTHER INSTRUMENT EVIDENCING A TRANSFER OF REAL PROPERTY MAY BE ACCEPTED FOR RECORDATION IF WATER RIGHTS ARE ASSOCIATED WITH

1 THE PROPERTY UNTIL A WATER RIGHT TRANSFER CERTIFICATE HAS  
2 BEEN RECEIVED BY THE COUNTY CLERK AND RECORDER. IF NO WATER  
3 RIGHTS ARE ASSOCIATED WITH THE PROPERTY OR IF ASSOCIATED  
4 WATER RIGHTS ARE NOT TRANSFERRED WITH THE PROPERTY, THE  
5 REALTY TRANSFER CERTIFICATE EXECUTED UNDER 15-7-302 MUST  
6 STATE THAT FACT.

7 ~~(2)(12)~~ The county clerk and recorder shall cause a  
8 permanent record of the water right transfer certificate to  
9 be made.

10 ~~(3)(14)~~ The county clerk and recorder shall send a copy  
11 of the water right transfer certificate to the department  
12 and to the office of the chief water judge.

13 **NEW SECTION.** Section 5. Effect of recordation. (1)  
14 Failure to comply with [sections 1 through 6] does not  
15 affect the validity or effectiveness of an instrument or  
16 deed as between the parties to it.

17 (2) The recordation of the water right transfer  
18 certificate with the county clerk and recorder is  
19 constructive notice of the content thereof.

20 **NEW SECTION.** Section 6. Fee. (1) The ~~BOARD OF NATURAL~~  
21 ~~RESOURCES AND CONSERVATION~~ chief--water--judge--and--the  
22 department shall ~~BY RULE~~ prescribe a fee that must cover the  
23 cost of ~~ID~~ recordation by the county clerk and recorder and  
24 the department ~~IN PROCESSING THE COPY OF THE TRANSFER~~  
25 ~~CERTIFICATE~~. The fee must be paid at the time of recordation

1 of the water right transfer certificate.

2 (2) The county clerk and recorder shall ~~retain a~~  
3 ~~portion of the fee equal to the amount necessary to cover~~  
4 ~~the cost of recording the document. The remainder of the~~  
5 ~~fee must be forwarded.~~

6 ~~(A) COLLECT THE FEE REQUIRED UNDER SUBSECTION (1) AND~~  
7 ~~FORWARD IT~~ to the department and must ~~ID~~ be deposited in the  
8 water right appropriation account provided for in 85-2-316;  
9 AND

10 ~~(B) CHARGE AND COLLECT A RECORDING FEE AS PROVIDED FOR~~  
11 ~~IN 7-4-2632 7-4-2631 FOR RECORDING THE DOCUMENT.~~

12 Section 7. Section 85-2-403, MCA, is amended to read:

13 "85-2-403. Transfer of appropriation right. (1) The  
14 right to use water under a permit or certificate of water  
15 right shall pass with a conveyance of the land or transfer  
16 by operation of law, unless specifically exempted therefrom.  
17 All transfers of interests in appropriation rights shall be  
18 without loss of priority.

19 ~~(2) The person receiving the appropriation interest~~  
20 ~~shall file with the department notice of the transfer on a~~  
21 ~~form prescribed by the department.~~

22 ~~(3)(12)~~ Without obtaining prior approval from the  
23 department, an appropriator may not sever all or any part of  
24 an appropriation right from the land to which it is  
25 appurtenant, sell the appropriation right for other purposes

1 or to other lands, or make the appropriation right  
 2 appurtenant to other lands. The department shall approve the  
 3 proposed change if it determines that the proposed change  
 4 will not adversely affect the rights of other persons. If  
 5 the department determines that the proposed change might  
 6 adversely affect the rights of other persons, notice of the  
 7 proposed change shall be given in accordance with 85-2-307.  
 8 If the department then determines that an objection filed by  
 9 a person whose rights may be affected states a valid  
 10 objection to the proposed change, the department shall hold  
 11 a hearing thereon prior to its approval or denial of the  
 12 proposed change. Objections shall meet the requirements of  
 13 85-2-308(2) and hearings shall be held in accordance with  
 14 85-2-309.

15 ~~It is the purpose of this section to provide that any conveyance or other transfer of a water right~~  
 16 ~~made before the effective date of this section is~~  
 17 ~~effective and valid as to the parties to the conveyance or~~  
 18 ~~transfer and as to the state of Montana and its political~~  
 19 ~~subdivisions notwithstanding any failure by the parties to~~  
 20 ~~give notice to or obtain approval from the department~~  
 21 ~~pursuant to subsections 11 and 12 of this subsection applies~~  
 22 ~~retroactively within the meaning of 1-2-109 to transfers~~  
 23 ~~of water rights made before the effective date of this~~  
 24 ~~section and it does not apply to transfers made after the~~  
 25 ~~effective date of this section.~~

1 ~~(3) FAILURE TO COMPLY WITH THE PROVISIONS OF~~  
 2 ~~SUBSECTION (2) DOES NOT RENDER A CONVEYANCE OR RESERVATION~~  
 3 ~~OF A WATER RIGHT VOID, BUT THE RIGHT MAY NOT BE USED UNTIL~~  
 4 ~~THE DEPARTMENT HAS APPROVED THE CHANGE. THIS SUBSECTION~~  
 5 ~~APPLIES RETROACTIVELY, WITHIN THE MEANING OF 1-2-109, TO A~~  
 6 ~~CONVEYANCE OR RESERVATION MADE AFTER JULY 1, 1973.~~  
 7 ~~NEW SECTION~~ Section 8. Codification instruction.  
 8 Sections 1 through 6 are intended to be codified as an  
 9 integral part of Title 85, chapter 2, and the provisions of  
 10 Title 85, chapter 2, apply to sections 1 through 6.  
 11 ~~NEW SECTION~~ Section 9. Effective date. Section 7 is  
 12 effective on passage and approval.

-End-

## SENATE BILL NO. 401

INTRODUCED BY BOYLAN, HAGER,

RAMIREZ, DONALDSON, IVERSON

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE CENTRAL AND LOCAL RECORDATION OF WATER RIGHT TRANSFERS; ~~VALIDATING PREVIOUS PROVIDING THAT~~ TRANSFERS MADE WITHOUT PRIOR APPROVAL OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION MUST BE APPROVED AFTER THE TRANSFER; AMENDING SECTION 85-2-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. Section 1. Purpose. The purpose of [sections 1 through 6] is to facilitate the maintenance of a reliable record of water right ownership on both the state and local levels by requiring that water right transfers be recorded with the county clerk and recorder and that the county clerk and recorder notify the department and the water court of each transfer recorded.

NEW SECTION. Section 2. Definition. As used in [sections 1 through 6], "water right" means the right to use water as documented by a claim to an existing right, a permit, or a certificate of water right.

NEW SECTION. Section 3. Water right transfer

certificate. (1) The chief water judge and the department shall prescribe the form AND CONTENT of the water right transfer certificate.

(2) The department shall provide an adequate supply of such forms to each county clerk and recorder in the state.

NEW SECTION. Section 4. Recordation. ~~(1) Except in the case of a transfer of real property that is served by a public service water supply;~~

~~(a) the parties to a transfer of real property or their agents or representatives shall record with the county clerk and recorder a water right transfer certificate; and~~

~~(b) no instrument or deed evidencing a transfer of real property, whether or not there are if water rights are associated with the realty, may be accepted for recordation~~

~~until a water right transfer certificate has been received by the county clerk and recorder, if no water rights are associated with the property, the realty transfer~~

~~certificate executed under 15-7-305 must state that facts indicate in a transfer of a water right or their agents or representatives shall record with the county clerk and~~

~~record a water right transfer certificate.~~

~~(1) Except in the case of a transfer of real property served by a public service water supply, no deed or other instrument evidencing a transfer of real property may be accepted for recordation if water rights are associated with~~

1 ~~THE PROPERTY UNTIL A WATER RIGHT TRANSFER CERTIFICATE HAS~~  
 2 ~~BEGN RECEIVED BY THE COUNTY CLERK AND RECORDER. IF NO WATER~~  
 3 ~~RIGHTS ARE ASSOCIATED WITH THE PROPERTY OR IF ASSOCIATED~~  
 4 ~~WATER RIGHTS ARE NOT TRANSFERRED WITH THE PROPERTY THE~~  
 5 ~~REALTY TRANSFER CERTIFICATE EXECUTED UNDER 12-7-205 MUST~~  
 6 ~~STATE THAT FACT. (1) THE PARTIES TO A TRANSFER OF A WATER~~  
 7 ~~RIGHT OR THEIR AGENTS OR REPRESENTATIVES SHALL RECORD WITH~~  
 8 ~~THE COUNTY CLERK AND RECORDER A WATER RIGHT TRANSFER~~  
 9 ~~CERTIFICATE.~~

10 ~~(2) EXCEPT IN THE CASE OF A TRANSFER OF REAL PROPERTY~~  
 11 ~~SERVED BY A PUBLIC SERVICE WATER SUPPLY, WHEN ANY PERSON~~  
 12 ~~PRESENTS FOR RECORDING A DEED OR OTHER INSTRUMENT EVIDENCING~~  
 13 ~~A TRANSFER OF REAL PROPERTY, THE REALTY TRANSFER CERTIFICATE~~  
 14 ~~SHALL NOTE WHETHER OR NOT THE TRANSFER INCLUDES A TRANSFER~~  
 15 ~~OF WATER RIGHTS. IF THE REALTY TRANSFER CERTIFICATE NOTES A~~  
 16 ~~TRANSFER OF WATER RIGHTS, THE CLERK AND RECORDER SHALL~~  
 17 ~~PROVIDE SUCH PERSON THE FORM PRESCRIBED IN THIS ACT FOR THE~~  
 18 ~~TRANSFER OF WATER RIGHTS. THE RECORDING OF THE DEED OR OTHER~~  
 19 ~~INSTRUMENT SHALL NOT BE DELAYED BECAUSE OF THE TRANSFER OF~~  
 20 ~~THE WATER RIGHTS.~~

21 ~~(3) (1) The county clerk and recorder shall cause a~~  
 22 ~~permanent record of the water right transfer certificate to~~  
 23 ~~be made.~~

24 ~~(3) (4) The county clerk and recorder shall send a copy~~  
 25 ~~of the water right transfer certificate to the department~~

1 and to the office of the chief water judge.

2 ~~NEW SECTION. Section 5. Effect of recordation. (1)~~  
 3 ~~Failure to comply with [sections 1 through 6] does not~~  
 4 ~~affect the validity or effectiveness of an instrument or~~  
 5 ~~deed as between the parties to it.~~

6 ~~(2) The recordation of the water right transfer~~  
 7 ~~certificate with the county clerk and recorder is~~  
 8 ~~constructive notice of the content thereof.~~

9 ~~NEW SECTION. Section 6. Fee. (1) The BOARD OF NATURAL~~  
 10 ~~RESOURCES AND CONSERVATION chief water judge and the~~  
 11 ~~department shall BY RULE prescribe a fee that must cover the~~  
 12 ~~cost of recording by the county clerk and recorder and~~  
 13 ~~the department IN PROCESSING THE COPY OF THE TRANSFER~~  
 14 ~~CERTIFICATE. The fee must be paid at the time of recordation~~  
 15 ~~of the water right transfer certificate.~~

16 ~~(2) The county clerk and recorder shall retain a~~  
 17 ~~portion of the fee equal to the amount necessary to cover~~  
 18 ~~the cost of recording the document. The remainder of the~~  
 19 ~~fee must be forwarded.~~

20 ~~(A) COLLECT THE FEE REQUIRED UNDER SUBSECTION (1) AND~~  
 21 ~~FORWARD IT to the department and must be deposited in the~~  
 22 ~~water right appropriation account provided for in 85-2-318;~~  
 23 ~~AND~~

24 ~~(B) CHARGE AND COLLECT A RECORDING FEE AS PROVIDED FOR~~  
 25 ~~IN 7-4-2632 7-4-2631 FOR RECORDING THE DOCUMENT.~~

Section 7. 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.

(3) (2) 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.

~~(3) Any conveyance or other transfer of a water right made before the effective date of this section is effective and valid as to the parties to the conveyance or transfer and as to the state of Montana and its political subdivisions, notwithstanding any failure by the parties to give notice to or obtain approval from the department pursuant to subsections (1) and (2). This subsection applies retroactively within the meaning of 1-2-109, to transfers of water rights made before the effective date of this section. It does not apply to transfers made after the effective date of this section.~~

(3) FAILURE TO COMPLY WITH THE PROVISIONS OF SUBSECTION (2) DOES NOT RENDER A CONVEYANCE OR RESERVATION OF A WATER RIGHT VOID, BUT THE RIGHT MAY NOT BE USED UNTIL THE DEPARTMENT HAS APPROVED THE CHANGE. THIS SUBSECTION APPLIES RETROACTIVELY, WITHIN THE MEANING OF 1-2-109, TO A CONVEYANCE OR RESERVATION MADE AFTER JULY 1, 1973.

NEW SECTION Section 8. Codification instruction. Sections 1 through 6 are intended to be codified as an integral part of Title 85, chapter 2, and the provisions of Title 85, chapter 2, apply to sections 1 through 6.

NEW SECTION Section 9. Effective date. Section 7 is

SB 0401/04

1 - effective on passage and approval.

-End-

-7-

SB 401