

HOUSE BILL NO. 680

INTRODUCED BY IVERSON, BLAYLOCK, HARP, SHAW,
ASAY, CODY, HOLLIDAY, HARPER, MARKS, NEUMAN,
ABRAMS, D. BROWN, VAN VALKENBURG, KADAS,
VINCENT, DONALDSON, NATHE, BRADLEY,
POFF, TVEIT, E. SMITH, BARDANOUE

BY REQUEST OF THE SELECT COMMITTEE ON WATER MARKETING

IN THE HOUSE

February 5, 1985	Introduced and referred to Committee on Natural Resources.
February 21, 1985	Committee recommend bill do pass as amended. Report adopted.
February 22, 1985	Bill printed and placed on members' desks.
February 23, 1985	Second reading, do pass. Considered correctly engrossed.
February 26, 1985	Third reading, passed. Transmitted to Senate.

IN THE SENATE

March 4, 1985	Introduced and referred to Committee on Natural Resources.
March 15, 1985	Fiscal Note requested.
March 20, 1985	Fiscal Note returned.
March 21, 1985	Committee recommend bill be concurring in as amended. Report adopted.

March 21, 1985	Statement of Intent attached.
March 22, 1985	Motion pass consideration until 64th Legislative Day.
March 26, 1985	Second reading, concurred in as amended.
March 28, 1985	Third reading, concurred in. Ayes, 45; Noes, 5.
	Returned to House with amendments.

IN THE HOUSE

March 28, 1985	Received from Senate.
April 8, 1985	Second reading, pass consideration.
April 9, 1985	Second reading, amendments concurred in.
	On motion, rules suspended and bill placed on third reading this day.
	Third reading, amendments concurred in.
	Sent to enrolling.
	Reported correctly enrolled.

HOUSE BILL NO. 680

INTRODUCED BY *Laura Blaylock* *Harris Shaw* *any*

BY REQUEST OF THE SELECT COMMITTEE ON WATER MARKETING *Body*

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING STATE WATER
Van Valkenburg *Kodas* *Vincent* *James* *David Broom* *NATHAN Bradley*

POLICY TO MAXIMIZE MONTANA'S INTERESTS IN THE INTERSTATE,
Barbara

ALLOCATION OF WATER; AMENDING CRITERIA FOR WATER
E. Smith

APPROPRIATION AND CHANGES IN APPROPRIATION; PROVIDING FOR A

LIMITED WATER LEASING PROGRAM; EXEMPTING WATER RESERVATIONS

FROM THE LEASING PROGRAM; PLACING CERTAIN PIPELINES UNDER

THE MONTANA MAJOR FACILITY SITING ACT; PROVIDING FOR WATER

RESERVATIONS IN THE MISSOURI RIVER BASIN; ESTABLISHING A

WATER RESOURCES DATA MANAGEMENT SYSTEM; CREATING A PERMANENT

WATER POLICY COMMITTEE; REPEALING THE BAN ON THE USE OF

WATER FOR COAL SLURRY; AMENDING SECTIONS 75-20-104,

75-20-216, 75-20-218, 75-20-303, 75-20-304, 75-20-1202,

85-1-203 THROUGH 85-1-205, 85-1-621, 85-2-102, 85-2-112,

85-2-122, 85-2-124, 85-2-301, 85-2-311, 85-2-312, 85-2-316,

85-2-402, MCA, AND SECTION 7, CHAPTER 706, LAWS OF 1983;

REPEALING SECTION 85-2-104, MCA; AND PROVIDING AN EFFECTIVE
DATE AND AN APPLICABILITY DATE."

WHEREAS, the Select Committee on Water Marketing was
commissioned by the 1983 Legislature to undertake a study of
the advantages and disadvantages of water marketing; and

WHEREAS, the Select Committee in completing its study
determined that Montana needs to address broader questions
of water policy in order to secure Montana's interests in
allocation and management of state waters; and

WHEREAS, the Select Committee has presented a
comprehensive package of recommendations that must be
considered as a whole; and

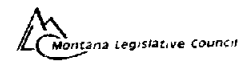
WHEREAS, these recommendations serve to revise
Montana's water policy in order to maximize Montana's
authority over management of state waters and other natural
resources and to conserve water for existing and future
beneficial uses by Montanans.

THEREFORE, the Legislature of the State of Montana
finds that this legislation and other recommendations of the
Select Committee on Water Marketing constitute an
appropriate revision of state water policy necessary to
secure Montana's interests for present and future benefit to
Montanans.

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

Section 1. Section 85-2-102, MCA, is amended to read:
"85-2-102. Definitions. Unless the context requires
otherwise, in this chapter the following definitions apply:

(1) "Appropriate" means to divert, impound, or
withdraw (including by stock for stock water) a quantity of



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1 water or, in the case of a public agency, to reserve water
2 in accordance with 85-2-316.

3 (2) "Beneficial use", unless otherwise provided,
4 means:

5 (a) a use of water for the benefit of the
6 appropriator, other persons, or the public, including but
7 not limited to agricultural (including stock water),
8 domestic, fish and wildlife, industrial, irrigation, mining,
9 municipal, power, and recreational uses; and

10 (b) a use of water appropriated by the department for
11 the state water leasing program under [section 14] and of
12 water leased under a valid lease issued by the department
13 under [section 14].

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

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

18 (5) "Change in appropriation right" means a change in
19 the place of diversion, the place of use, the purpose of
20 use, or the place of storage.

21 (5)(6) "Declaration" means the declaration of an
22 existing right filed with the department under section 8,
23 Chapter 452, Laws of 1973.

24 (6)(7) "Department" means the department of natural
25 resources and conservation provided for in Title 2, chapter

1 15, part 33.

2 (7)(8) "Existing right" means a right to the use of
3 water which would be protected under the law as it existed
4 prior to July 1, 1973.

5 (8)(9) "Groundwater" means any water beneath the land
6 surface or beneath the bed of a stream, lake, reservoir, or
7 other body of surface water, and which is not a part of that
8 surface water.

9 (9)(10) "Permit" means the permit to appropriate issued
10 by the department under 85-2-301 through 85-2-303 and
11 85-2-306 through 85-2-314.

12 (10)(11) "Person" means an individual, association,
13 partnership, corporation, state agency, political
14 subdivision, the United States or any agency thereof, or any
15 other entity.

16 (11)(12) "Political subdivision" means any county,
17 incorporated city or town, public corporation, or district
18 created pursuant to state law or other public body of the
19 state empowered to appropriate water but not a private
20 corporation, association, or group.

21 (12)-"Slurry"-means-a-mixture-of--water--and--insoluble
22 material:

23 (13) "Waste" means the unreasonable loss of water
24 through the design or negligent operation of an
25 appropriation or water distribution facility or the

1 application of water to anything but a beneficial use.

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

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

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

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

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

16 Section 2. Section 85-1-204, MCA, is amended to read:

17 "85-1-204. Department powers over state waters. (1)
18 The department, with the approval of the board, may sell,
19 lease, and otherwise dispose of all waters which may be
20 impounded under this chapter, and the water may be sold for
21 the purpose of irrigation, development of power, watering of
22 stock, or any other purpose. The department may also lease
23 water under the state water leasing program established
24 under the provisions of [section 14]. To the extent that it
25 may be necessary to carry out this chapter and subject to a

1 compliance with the other provisions of this chapter, the
2 department has full control of all the water of the state
3 not under the exclusive control of the United States and not
4 vested in private ownership, and it shall take such steps as
5 may be necessary to appropriate and conserve the same for
6 the use of the people. The authority of the department
7 conferred by this chapter extends and applies to rights to
8 the natural flow of the waters of this state which it may
9 acquire, with the approval of the board, by condemnation,
10 purchase, exchange, appropriation, or agreement.

11 (2) For the purpose of regulating the diversion of
12 those waters, the department may enter upon the means and
13 place of use of all appropriators for making surveys of
14 respective rights and seasonal needs.

15 (3) The department may take into consideration the
16 decrees of the courts of this state having jurisdiction
17 which purport to adjudicate the waters of a stream or its
18 tributaries, and a fair, reasonable, and equitable
19 reconciliation shall be made between the claimants asserting
20 rights under different decrees and between decreed rights
21 and asserted rights of appropriation not adjudicated by any
22 court.

23 (4) The department, at its discretion, may hold
24 hearings relating to the rights of respective claimants
25 after first giving such notice as it considers appropriate

1 and make findings of the date and quantity of appropriation
2 and use of all claimants which the department will recognize
3 and observe in diverting the waters which it owns. The
4 department may police and distribute to the owner of the
5 recognized appropriation the waters due him upon request and
6 under terms agreed upon.

7 (5) The department, when engaged in controlling and
8 dividing the natural flow of a stream under the authority
9 granted by this chapter, is exercising a police power of the
10 state, and water commissioners appointed by any court may
11 not deprive the department of any of the waters owned or
12 administered under agreement with respective owners. The
13 owner of a prior right contending that the department is not
14 recognizing and respecting the appropriation may resort to a
15 court for the purpose of determining whether or not the
16 rights of the claimant have been invaded, and the department
17 shall observe the terms of the final decree.

18 (6) When the department impounds or acquires the right
19 of appropriation of the waters of a stream it may divert or
20 authorize the diversion at any point on the stream or any
21 portion thereof when it is done without injury to a prior
22 appropriator."

23 Section 3. Section 85-2-301, MCA, is amended to read:

24 "85-2-301. Right to appropriate. (1) After July 1,
25 1973, a person may not appropriate water except as provided

1 in this chapter. A person may only appropriate water for a
2 beneficial use.

3 (2) (a) Only the department may appropriate water by
4 permit under 85-2-311 in either of the following instances:

5 (i) for transport outside the following river basins:

6 (A) the Clark Fork River and its tributaries to its
7 confluence with Lake Pend Oreille in Idaho;

8 (B) the Kootenai River and its tributaries to its
9 confluence with Kootenay Lake in British Columbia;

10 (C) the St. Mary River and its tributaries to its
11 confluence with the Oldman River in Alberta;

12 (D) the Little Missouri River and its tributaries to
13 its confluence with Lake Sakakawea in North Dakota;

14 (E) the Missouri River and its tributaries to its
15 confluence with the Yellowstone River in North Dakota; and

16 (F) the Yellowstone River to its confluence with the
17 Missouri River in North Dakota; or

18 (ii) whenever water in excess of 4,000 acre-feet a year
19 and 5.5 cubic feet per second, for any use, is to be
20 consumed.

21 (b) Water for these purposes or in these amounts may
22 be leased from the department by any person under the
23 provisions of [section 14].

24 (3) A right to appropriate water may not be acquired
25 by any other method, including by adverse use, adverse

1 possession, prescription, or estoppel. The method prescribed
2 by this chapter is exclusive."

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

4 "85-2-311. Criteria for issuance of permit. (1) Except
5 as provided in subsections (2) ~~and--(3)~~ through (4), the
6 department shall issue a permit if the applicant proves by
7 substantial credible evidence that the following criteria
8 are met:

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

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

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

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

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

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

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

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

25 (2) ~~(a)~~ The department may not issue a permit for an

1 appropriation of ~~10,000~~ 4,000 or more acre-feet of water a
2 year ~~or--15~~ and 5.5 or more cubic feet per second of water
3 unless ~~it affirmatively finds~~ the applicant proves by clear
4 and convincing evidence that:

5 ~~(i)~~ (a) the criteria in subsection (1) are met;

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

9 ~~(iii)~~ (c) the proposed appropriation is a reasonable
10 use. Such a finding shall be based on a consideration of the
11 following:

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

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

18 ~~(B)~~ ~~the economic feasibility of the project;~~

19 ~~(B)~~ (iii) the effects on the quantity, and quality ~~and~~
20 potability of water for existing beneficial uses in the
21 source of supply;

22 (iv) the availability and feasibility of using
23 low-quality water for the purpose for which application has
24 been made;

25 ~~(E)~~ (v) the effects on private property rights by any

1 creation of or contribution to saline seep; and

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

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

12 (3) (a) The state of Montana has long recognized the
13 importance of conserving its public waters and the necessity
14 to maintain adequate water supplies for the state's water
15 requirements. Although the state of Montana also recognizes
16 that, under appropriate conditions, the out-of-state
17 transportation and use of its public waters are not in
18 conflict with the public welfare of its citizens or the
19 conservation of its waters, the criteria in this subsection
20 (3) must be met before out-of-state use may occur.

21 (b) The department may not issue a permit for the
22 appropriation of water for withdrawal and transportation for
23 use outside the state unless the applicant proves by clear
24 and convincing evidence that:

25 (i) depending on the volume of water diverted or

1 consumed, the applicable criteria and procedures of
2 subsection (1) or (2) are met;

3 (ii) the proposed out-of-state use of water is not
4 contrary to water conservation in Montana; and

5 (iii) the proposed out-of-state use of water is not
6 otherwise detrimental to the public welfare of the citizens
7 of Montana.

8 (c) In determining whether the applicant has proved by
9 clear and convincing evidence that the requirements of
10 subsections (3)(b)(ii) and (3)(b)(iii) are met, the
11 department shall consider the following factors:

12 (i) whether there are present or projected water
13 shortages within the state of Montana;

14 (ii) whether the water that is the subject of the
15 application could feasibly be transported to alleviate water
16 shortages within the state of Montana;

17 (iii) the supply and sources of water available to the
18 applicant in the state where the applicant intends to use
19 the water; and

20 (iv) the demands placed on the applicant's supply in
21 the state where the applicant intends to use the water.

22 (d) When applying for a permit or a lease to withdraw
23 and transport water for use outside the state, the applicant
24 shall submit to and comply with the laws of the state of
25 Montana governing the appropriation, lease, and use of

1 water.

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

14 Section 5. Section 85-2-312, MCA, is amended to read:

15 "85-2-312. Terms of permit. (1) The department may
16 issue a permit for less than the amount of water requested,
17 but in no case may it issue a permit for more water than is
18 requested or than can be beneficially used without waste for
19 the purpose stated in the application. The department may
20 require modification of plans and specifications for the
21 appropriation or related diversion or construction. ~~It~~ Based
22 upon the criteria listed in 85-2-311, the department may
23 issue a permit subject to terms, conditions, restrictions,
24 and limitations it considers necessary ~~to protect the rights~~
25 ~~of other appropriators~~, and it may issue temporary or

1 seasonal permits. A permit shall be issued subject to
2 existing rights and any final determination of those rights
3 made under this chapter.

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

15 (3) The original of the permit shall be sent to the
16 permittee, and a copy shall be kept in the office of the
17 department in Helena.

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

24 Section 6. Section 85-2-124, MCA, is amended to read:

25 "85-2-124. Fees for environmental impact statements.

1 (1) Whenever the department determines that the filing of an
 2 application (or a combination of applications) for a permit
 3 or approval under this chapter requires the preparation of
 4 an environmental impact statement as prescribed by the
 5 Montana Environmental Policy Act and the application (or
 6 combination of applications) involves the use of ~~10,000~~
 7 4,000 or more acre-feet per year or ~~15~~ and 5.5 or more cubic
 8 feet per second of water, the applicant shall pay to the
 9 department the fee prescribed in this section. The
 10 department shall notify the applicant in writing within 90
 11 days of receipt of a correct and complete application (or a
 12 combination of applications) if it determines that an
 13 environmental impact statement and fee is required.

14 (2) Upon notification by the department under
 15 subsection (1), the applicant shall pay a fee based upon the
 16 estimated cost of constructing, repairing, or changing the
 17 appropriation and diversion facilities as herein provided.
 18 The maximum fee that shall be paid to the department may not
 19 exceed the fees set forth in the following declining scale:
 20 2% of the estimated cost up to \$1 million; plus 1% of the
 21 estimated cost over \$1 million and up to \$20 million; plus
 22 1/2 of 1% of the estimated cost over \$20 million and up to
 23 \$100 million; plus 1/4 of 1% of the estimated cost over \$100
 24 million and up to \$300 million; plus 1/8 of 1% of the
 25 estimated cost over \$300 million. The fee shall be

1 deposited in the state special revenue fund to be used by
 2 the department only to comply with the Montana Environmental
 3 Policy Act in connection with the application(s). Any
 4 amounts paid by the applicant but not actually expended by
 5 the department shall be refunded to the applicant.

6 (3) The department and the applicant may determine by
 7 agreement the estimated cost of any facility for purposes of
 8 computing the amount of the fee to be paid to the department
 9 by the applicant. The department may contract with an
 10 applicant for:

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

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

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

22 (4) Any payments made to the department or any third
 23 party by an applicant under any such contract or contracts
 24 shall be credited against any fee the applicant must pay
 25 hereunder. The department and the applicant may agree on

1 additional credits against the fee for environmental work
2 performed by the applicant at the applicant's own expense.

3 (5) No fee as prescribed by this section may be
4 assessed against an applicant for a permit or approval if
5 the applicant has also filed an application for a
6 certificate of environmental compatibility or public need
7 pursuant to the Montana Major Facility Siting Act and the
8 appropriation or use of water involved in the application(s)
9 for permit or approval has been or will be studied by the
10 department pursuant to that act.

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

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

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

23 Section 7. Section 85-2-402, MCA, is amended to read:

24 "85-2-402. Changes in appropriation rights. ~~(1)-An~~
25 ~~appropriator may not change the place of diversion, place of~~

1 ~~use, purpose of use, or place of storage except as permitted~~
2 ~~under this section and approved by the department.~~

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

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

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

24 ~~(5)-If a change is not completed as approved by the~~
25 ~~department or if the terms, conditions, restrictions, and~~

1 ~~limitations of the change approval are not complied with,~~
 2 ~~the department may after notice and opportunity for~~
 3 ~~hearing, require the appropriator to show cause why the~~
 4 ~~change approval should not be modified or revoked. If the~~
 5 ~~appropriator fails to show sufficient cause, the department~~
 6 ~~may modify or revoke the change approval.~~

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

1 under this section and with the approval of the department
 2 or, if applicable, of the legislature.

3 (2) Except as provided in subsections (3) through (5),
 4 the department shall approve a change in appropriation right
 5 if the appropriator proves by substantial credible evidence
 6 that the following criteria are met:

7 (a) The proposed use will not adversely affect the
 8 water rights of other persons or other planned uses or
 9 developments for which a permit has been issued or for which
 10 water has been reserved.

11 (b) The proposed means of diversion, construction, and
 12 operation of the appropriation works are adequate.

13 (c) The proposed use of water is a beneficial use.

14 (3) The department may not approve a change in purpose
 15 of use or place of use of an appropriation of 4,000 or more
 16 acre-feet of water a year and 5.5 or more cubic feet per
 17 second of water unless the appropriator proves by clear and
 18 convincing evidence that:

19 (a) the criteria in subsection (2) are met;

20 (b) the proposed change is a reasonable use. A
 21 finding of reasonable use must be based on a consideration
 22 of:

23 (i) the existing demands on the state water supply, as
 24 well as projected demands of water for future beneficial
 25 purposes, including municipal water supplies, irrigation

1 systems, and minimum streamflows for the protection of
2 existing water rights and aquatic life;

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

4 (iii) the effects on the quantity and quality of water
5 for existing uses in the source of supply;

6 (iv) the availability and feasibility of using
7 low-quality water for the purpose for which application has
8 been made;

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

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

15 (4) The department may not approve a change in purpose
16 of use or place of use for a diversion that results in 4,000
17 or more acre-feet of water a year and 5.5 or more cubic feet
18 per second of water being consumed unless:

19 (a) the applicant proves by clear and convincing
20 evidence and the department finds that the criteria in
21 subsections (2) and (3) are met; and

22 (b) the department then petitions the legislature and
23 the legislature affirms the decision of the department after
24 a public hearing.

25 (5) (a) The state of Montana has long recognized the

1 importance of conserving its public waters and the necessity
2 to maintain adequate water supplies for the state's water
3 requirements. Although the state of Montana also recognizes
4 that, under appropriate conditions, the out-of-state
5 transportation and use of its public waters are not in
6 conflict with the public welfare of its citizens or the
7 conservation of its waters, the following criteria must be
8 met before out-of-state use may occur:

9 (b) The department and, if applicable, the legislature
10 may not approve a change in appropriation right for the
11 withdrawal and transportation of appropriated water for use
12 outside the state unless the appropriator proves by clear
13 and convincing evidence and, if applicable, the legislature
14 approves after a public hearing that:

15 (i) depending on the volume of water diverted or
16 consumed, the applicable criteria and procedures of
17 subsection (2) or (3) are met;

18 (ii) the proposed out-of-state use of water is not
19 contrary to water conservation in Montana; and

20 (iii) the proposed out-of-state use of water is not
21 otherwise detrimental to the public welfare of the citizens
22 of Montana.

23 (c) In determining whether the appropriator has proved
24 by clear and convincing evidence that the requirements of
25 subsections (5)(b)(ii) and (5)(b)(iii) will be met, the

1 department and, if applicable, the legislature shall
 2 consider the following factors:

3 (i) whether there are present or projected water
 4 shortages within the state of Montana;

5 (ii) whether the water that is the subject of the
 6 proposed change in appropriation might feasibly be
 7 transported to alleviate water shortages within the state of
 8 Montana;

9 (iii) the supply and sources of water available to the
 10 applicant in the state where the applicant intends to use
 11 the water; and

12 (iv) the demands placed on the applicant's supply in
 13 the state where the applicant intends to use the water.

14 (d) When applying for a change in appropriation right
 15 to withdraw and transport water for use outside the state,
 16 the applicant shall submit to and comply with the laws of
 17 the state of Montana governing the appropriation and use of
 18 water.

19 (6) For any application for a change in appropriation
 20 right involving 4,000 or more acre-feet of water a year and
 21 5.5 or more cubic feet per second of water, the department
 22 shall give notice of the proposed change in accordance with
 23 85-2-307 and shall hold a hearing in accordance with
 24 85-2-309 prior to its approval or denial of the proposed
 25 change. The department shall provide notice and may hold a

1 hearing upon any other proposed change if it determines that
 2 such a change might adversely affect the rights of other
 3 persons.

4 (7) The department or the legislature, if applicable,
 5 may approve a change subject to such terms, conditions,
 6 restrictions, and limitations as it considers necessary to
 7 protect the rights of other persons and satisfy the criteria
 8 of this section, including limitations on the time for
 9 completion of the change.

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

19 +7+(9) The original of a change approval issued by the
 20 department must be sent to the applicant, and a duplicate
 21 must be kept in the office of the department in Helena.

22 +8+(10) A person holding an issued permit or change
 23 approval that has not been perfected may change the place of
 24 diversion, place of use, purpose of use, or place of storage
 25 by filing an application for change pursuant to this

1 section.

2 (11) A change in appropriation right contrary to the
 3 provisions of this section is invalid. No officer, agent,
 4 agency, or employee of the state may knowingly permit, aid,
 5 or assist in any manner such unauthorized change in
 6 appropriation right. No person or corporation may, directly
 7 or indirectly, personally or through an agent, officer, or
 8 employee, attempt to change an appropriation right except in
 9 accordance with this section."

10 Section 8. Section 75-20-104, MCA, is amended to read:

11 "75-20-104. Definitions. In this chapter, unless the
 12 context requires otherwise, the following definitions apply:

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

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

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

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

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

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

9 (7) "Commence to construct" means:

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

16 (b) the fracturing of underground formations by any
 17 means if such activity is related to the possible future
 18 development of a gasification facility or a facility
 19 employing geothermal resources but does not include the
 20 gathering of geological data by boring of test holes or
 21 other underground exploration, investigation, or
 22 experimentation;

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

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

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

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

12 (10) "Facility" means:

13 (a) except for crude oil and natural gas refineries,
14 and facilities and associated facilities designed for or
15 capable of producing, gathering, processing, transmitting,
16 transporting, or distributing crude oil or natural gas, and
17 those facilities subject to The Montana Strip and
18 Underground Mine Reclamation Act, each plant, unit, or other
19 facility and associated facilities designed for or capable
20 of:

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

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

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

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

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

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

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

23 (d) each pipeline greater than 17 inches in diameter
24 and 30 miles in length, and associated facilities;

25 fd)(e) any use of geothermal resources, including the

1 use of underground space in existence or to be created, for
 2 the creation, use, or conversion of energy, designed for or
 3 capable of producing geothermally derived power equivalent
 4 to 25 million Btu per hour or more or any addition thereto
 5 having an estimated cost in excess of \$750,000;

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

7 (11) "Person" means any individual, group, firm,
 8 partnership, corporation, cooperative, association,
 9 government subdivision, government agency, local government,
 10 or other organization or entity.

11 (12) "Transmission substation" means any structure,
 12 device, or equipment assemblage, commonly located and
 13 designed for voltage regulation, circuit protection, or
 14 switching necessary for the construction or operation of a
 15 proposed transmission line.

16 (13) "Utility" means any person engaged in any aspect
 17 of the production, storage, sale, delivery, or furnishing of
 18 heat, electricity, gas, hydrocarbon products, or energy in
 19 any form for ultimate public use."

20 Section 9. Section 75-20-216, MCA, is amended to read:

21 "75-20-216. Study, evaluation, and report on proposed
 22 facility -- assistance by other agencies. (1) After receipt
 23 of an application, the department and department of health
 24 shall within 90 days notify the applicant in writing that:

25 (a) the application is in compliance and is accepted

1 as complete; or

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

8 (2) Upon receipt of an application complying with
 9 75-20-211 through 75-20-215, and this section, the
 10 department shall commence an intensive study and evaluation
 11 of the proposed facility and its effects, considering all
 12 applicable criteria listed in 75-20-301 and 75-20-503 and
 13 the department of health shall commence a study to enable it
 14 or the board of health to issue a decision, opinion, order,
 15 certification, or permit as provided in subsection (3). The
 16 department and department of health shall use, to the extent
 17 they consider applicable, valid and useful existing studies
 18 and reports submitted by the applicant or compiled by a
 19 state or federal agency.

20 (3) The department of health shall within 1 year
 21 following the date of acceptance of an application and the
 22 board of health or department of health, if applicable,
 23 within an additional 6 months issue any decision, opinion,
 24 order, certification, or permit required under the laws
 25 administered by the department of health or the board of

1 health and this chapter. The department of health and the
 2 board of health shall determine compliance with all
 3 standards, permit requirements, and implementation plans
 4 under their jurisdiction for the primary and reasonable
 5 alternate locations in their decision, opinion, order,
 6 certification, or permit. The decision, opinion, order,
 7 certification, or permit, with or without conditions, is
 8 conclusive on all matters that the department of health and
 9 board of health administer, and any of the criteria
 10 specified in subsections (2) through (7) of 75-20-503 that
 11 are a part of the determinations made under the laws
 12 administered by the department of health and the board of
 13 health. Although the decision, opinion, order,
 14 certification, or permit issued under this subsection is
 15 conclusive, the board retains authority to make the
 16 determination required under 75-20-301(2)(c). The decision,
 17 opinion, order, certification, or permit of the department
 18 of health or the board of health satisfies the review
 19 requirements by those agencies and shall be acceptable in
 20 lieu of an environmental impact statement under the Montana
 21 Environmental Policy Act. A copy of the decision, opinion,
 22 order, certification, or permit shall be served upon the
 23 department and the board and shall be utilized as part of
 24 their final site selection process. Prior to the issuance of
 25 a preliminary decision by the department of health and

1 pursuant to rules adopted by the board of health, the
 2 department of health shall provide an opportunity for public
 3 review and comment.

4 (4) Within 22 months following acceptance of an
 5 application for a facility as defined in (a) and ~~(d)~~(e) of
 6 75-20-104(10) and for a facility as defined in (b) ~~and (c)~~
 7 through (d) of 75-20-104(10) which is more than 30 miles in
 8 length and within 1 year for a facility as defined in (b)
 9 ~~and (c)~~ through (d) of 75-20-104(10) which is 30 miles or
 10 less in length, the department shall make a report to the
 11 board which shall contain the department's studies,
 12 evaluations, recommendations, other pertinent documents
 13 resulting from its study and evaluation, and an
 14 environmental impact statement or analysis prepared pursuant
 15 to the Montana Environmental Policy Act, if any. If the
 16 application is for a combination of two or more facilities,
 17 the department shall make its report to the board within the
 18 greater of the lengths of time provided for in this
 19 subsection for either of the facilities.

20 (5) The departments of highways; commerce; fish,
 21 wildlife, and parks; state lands; revenue; and public
 22 service regulation shall report to the department
 23 information relating to the impact of the proposed site on
 24 each department's area of expertise. The report may include
 25 opinions as to the advisability of granting, denying, or

1 modifying the certificate. The department shall allocate
 2 funds obtained from filing fees to the departments making
 3 reports to reimburse them for the costs of compiling
 4 information and issuing the required report."

5 Section 10. Section 75-20-218, MCA, is amended to
 6 read:

7 "75-20-218. Hearing date -- location -- department to
 8 act as staff -- hearings to be held jointly. (1) Upon
 9 receipt of the department's report submitted under
 10 75-20-216, the board shall set a date for a hearing to begin
 11 not more than 120 days after the receipt. ~~Except--for--those~~
 12 ~~hearings--involving-applications-submitted-for-facilities-as~~
 13 ~~defined-in--(b)--and--(c)--of--75-20-104(10);--certification~~
 14 Certification hearings shall be conducted by the board in
 15 the county seat of Lewis and Clark County or the county in
 16 which the facility or the greater portion thereof is to be
 17 located.

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

23 (3) At the request of the applicant, the department of
 24 health and the board of health shall hold any required
 25 permit hearings required under laws administered by those

1 agencies in conjunction with the board certification
 2 hearing. In such a conjunctive hearing the time periods
 3 established for reviewing an application and for issuing a
 4 decision on certification of a proposed facility under this
 5 chapter supersede the time periods specified in other laws
 6 administered by the department of health and the board of
 7 health."

8 Section 11. Section 75-20-303, MCA, is amended to
 9 read:

10 "75-20-303. Opinion issued with decision -- contents.
 11 (1) In rendering a decision on an application for a
 12 certificate, the board shall issue an opinion stating its
 13 reasons for the action taken.

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

18 (3) Any certificate issued by the board shall include
 19 the following:

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

23 (i) the environmental impact of the proposed facility;
 24 (ii) any adverse environmental effects which cannot be
 25 avoided by issuance of the certificate;

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

3 (iv) alternatives to the proposed facility;

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

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

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

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

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

17 (b) For a facility as defined in (b), or (c), or (d)
18 of 75-20-104(10) that is 30 miles or less in length, the
19 time limit is 5 years.

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

1 facility and the process of judicial review of any such
2 permit or certificate.

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

6 Section 12. Section 75-20-304, MCA, is amended to
7 read:

8 "75-20-304. Waiver of provisions of certification
9 proceedings. (1) The board may waive compliance with any of
10 the provisions of 75-20-216 through 75-20-222, 75-20-501,
11 and this part if the applicant makes a clear and convincing
12 showing to the board at a public hearing that an immediate,
13 urgent need for a facility exists and that the applicant did
14 not have knowledge that the need for the facility existed
15 sufficiently in advance to fully comply with the provisions
16 of 75-20-216 through 75-20-222, 75-20-501, and this part.

17 (2) The board may waive compliance with any of the
18 provisions of this chapter upon receipt of notice by a
19 utility or person subject to this chapter that a facility or
20 associated facility has been damaged or destroyed as a
21 result of fire, flood, or other natural disaster or as the
22 result of insurrection, war, or other civil disorder and
23 there exists an immediate need for construction of a new
24 facility or associated facility or the relocation of a
25 previously existing facility or associated facility in order

1 to promote the public welfare.

2 (3) The board shall waive compliance with the
3 requirements of subsections (2)(c), (3)(b), and (3)(c) of
4 75-20-301 and 75-20-501(5) and the requirements of
5 subsections (1)(a)(iv) and (v) of 75-20-211, 75-20-216(3),
6 and 75-20-303(3)(a)(iv) relating to consideration of
7 alternative sites if the applicant makes a clear and
8 convincing showing to the board at a public hearing that:

9 (a) a proposed facility will be constructed in a
10 county where a single employer within the county has
11 permanently curtailed or ceased operations causing a loss of
12 250 or more permanent jobs within 2 years at the employer's
13 operations within the preceding 10-year period;

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

17 (c) the proposed facility will be constructed within a
18 15-mile radius of the operations that have ceased or been
19 curtailed; and

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

23 (4) The waiver provided for in subsection (3) applies
24 only to permanent job losses by a single employer. The
25 waiver provided for in subsection (3) does not apply to jobs

1 of a temporary or seasonal nature, including but not limited
2 to construction jobs, or job losses during labor disputes.

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

13 (6) The applicant shall pay all expenses required to
14 process and conduct a hearing on a waiver request under
15 subsection (3). However, any payments made under this
16 subsection shall be credited toward the fee paid under
17 75-20-215 to the extent the data or evidence presented at
18 the hearing or the decision of the board under subsection
19 (3) can be used in making a certification decision under
20 this chapter.

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

24 Section 13. Section 75-20-1202, MCA, is amended to
25 read:

1 "75-20-1202. Definitions. As used in this part and
2 75-20-201 through 75-20-203, the following definitions
3 apply:

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

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

8 (ii) converting, enriching, fabricating, or
9 reprocessing uranium minerals or nuclear fuels; or

10 (iii) storing or disposing of radioactive wastes or
11 materials from a nuclear facility.

12 (b) "Nuclear facility" does not include any
13 small-scale facility used solely for educational, research,
14 or medical purposes not connected with the commercial
15 generation of energy.

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

19 NEW SECTION. Section 14. Water leasing program. (1)
20 There is a water leasing program administered by the
21 department on behalf of the state of Montana.

22 (2) The department may acquire rights to water needed
23 for leasing under this program through appropriation of
24 water in its own name or by agreement with or purchase from
25 another holder of water rights.

1 (3) Water for leasing under the water leasing program
2 must be obtained from the following sources:

3 (a) any existing or future reservoir in a basin
4 concerning which a temporary preliminary decree, a
5 preliminary decree under 85-2-231, or a final decree under
6 85-2-234 has been entered;

7 (b) Fort Peck Reservoir, if an agreement between the
8 department and the federal government concerning the
9 acquisition of water and the sharing of revenues with the
10 state is in effect;

11 (c) Tiber, Canyon Ferry, Hungry Horse, or Yellowtail
12 Reservoirs if and for so long as there is an agreement
13 between the department and the federal government concerning
14 the acquisition of water and sharing of revenues with the
15 state from one or more of these reservoirs; and

16 (d) any other existing or future federal reservoir:

17 (i) located in a basin concerning which a temporary
18 preliminary decree, a preliminary decree under 85-2-231, or
19 a final decree under 85-2-234 has been entered; and

20 (ii) for which and for so long as there is an agreement
21 between the department and the federal government concerning
22 the acquisition of water and the sharing of revenues with
23 the state.

24 (4) Water may be leased for any beneficial use. The
25 amount of water that can be leased under this program for

1 all beneficial uses shall not exceed 50,000 acre-feet.

2 (5) The term of any lease may not exceed 50 years. A
3 term may be extended up to another 50 years if the
4 department again determines the desirability of leasing by
5 applying the considerations set forth in subsection (7). In
6 making such a redetermination, the department may require
7 the completion of an environmental impact statement in
8 accordance with subsection (6).

9 (6) The department shall require the completion of an
10 environmental impact statement under the provisions of Title
11 75, chapter 1, for lease applications that would result in
12 the consumption of 4,000 acre-feet a year or more and 5.5
13 cubic feet per second or more of water and for any other
14 application for which an environmental impact statement is
15 required by law. The department shall require the
16 completion of an environmental impact statement whenever the
17 cumulative effect of more than one application for a lease
18 would constitute a probable significant environmental
19 impact.

20 (7) Upon application by any person to lease water, the
21 department shall make an initial determination of whether it
22 is desirable for the department to lease water to the
23 applicant. Such a determination of desirability shall be
24 made solely on the following considerations:

25 (a) the content of the environmental impact statement,

1 if required;

2 (b) whether there is sufficient water available under
3 the water leasing program; and

4 (c) whether the criteria, except as to legislative
5 approval, set forth in 85-2-311 have been satisfied.

6 (8) The department shall for any agreement require
7 commercially reasonable terms and conditions, which may
8 include the requirement that up to 25% of the water to be
9 leased be made available to a potential user for any
10 beneficial use upon payment by such user of the costs of
11 tapping into and removing water from the applicant's
12 project. The department may differentiate in pricing,
13 depending on the proposed beneficial use of the water.

14 (9) The lease of water or the use of water under a
15 lease does not constitute a permit as provided in 85-2-102
16 and does not establish a right to appropriate water within
17 the meaning of Title 85, chapter 2, part 3.

18 (10) For purposes of the water leasing program
19 established in this section, it is the intent of the
20 legislature that the state act as a proprietor.

21 Section 15. Section 85-1-205, MCA, is amended to read:

22 "85-1-205. Acquisition of water in federal reservoirs.
23 {†} The department may acquire water or water storage by
24 purchase option or agreement with the federal government
25 from any federal reservoir for the purpose of sale, rent, or

1 distribution for ~~industrial and other~~ uses any beneficial
 2 use. In such cases, the department is not required to
 3 construct any diversion or appropriation facilities or
 4 works, and it may sell, rent, or distribute such water at
 5 such rates and under such terms and conditions as it
 6 considers appropriate, ~~except as provided in subsection (2).~~

7 ~~(2) "Until a final decree has been issued pursuant to~~
 8 ~~85-2-234 concerning the waters in a federal reservoir, the~~
 9 ~~department may sell, rent, or distribute such water only~~
 10 ~~after a permit has been issued to an applicant for purchase,~~
 11 ~~rent, or distribution of water in accordance with part 3 of~~
 12 ~~this chapter."~~

13 Section 16. Section 85-2-316, MCA, is amended to read:

14 "85-2-316. Reservation of waters. (1) The state or any
 15 political subdivision or agency thereof or the United States
 16 or any agency thereof may apply to the board to reserve
 17 waters for existing or future beneficial uses or to maintain
 18 a minimum flow, level, or quality of water throughout the
 19 year or at such periods or for such length of time as the
 20 board designates.

21 (2) Water may be reserved only for existing or future
 22 beneficial uses in the following river basins:

23 (a) the Clark Fork River and its tributaries to its
 24 confluence with Lake Pend Oreille in Idaho;

25 (b) the Kootenai River and its tributaries to its

1 confluence with Kootenay Lake in British Columbia;

2 (c) the St. Mary River and its tributaries to its
 3 confluence with the Oldman River in Alberta;

4 (d) the Little Missouri River and its tributaries to
 5 its confluence with Lake Sakakawea in North Dakota;

6 (e) the Missouri River and its tributaries to its
 7 confluence with the Yellowstone River in North Dakota; and

8 (f) the Yellowstone River to its confluence with the
 9 Missouri River in North Dakota.

10 ~~(2)(3)~~ Upon receiving an application, the department
 11 shall proceed in accordance with 85-2-307 through 85-2-309.
 12 After the hearing provided in 85-2-309, the board shall
 13 decide whether to reserve the water for the applicant. The
 14 department's costs of giving notice, holding the hearing,
 15 conducting investigations, and making records incurred in
 16 acting upon the application to reserve water, except the
 17 cost of salaries of the department's personnel, shall be
 18 paid by the applicant. In addition, a reasonable proportion
 19 of the department's cost of preparing an environmental
 20 impact statement shall be paid by the applicant unless
 21 waived by the department upon a showing of good cause by the
 22 applicant.

23 ~~(3)(4)~~ (a) The board may not adopt an order reserving
 24 water unless the applicant establishes to the satisfaction
 25 of the board:

1 ~~a~~(i) the purpose of the reservation;
 2 ~~b~~(ii) the need for the reservation;
 3 ~~c~~(iii) the amount of water necessary for the purpose
 4 of the reservation;
 5 ~~d~~(iv) that the reservation is in the public interest.
 6 (b) In determining the public interest under
 7 subsection (4)(a)(iv), the board may not adopt an order
 8 reserving water for withdrawal and transport for use outside
 9 the state unless the applicant proves by clear and
 10 convincing evidence that:
 11 (i) the proposed out-of-state use of water is not
 12 contrary to water conservation in Montana; and
 13 (ii) the proposed out-of-state use of water is not
 14 otherwise detrimental to the public welfare of the citizens
 15 of Montana.
 16 (c) In determining whether the applicant has proved by
 17 clear and convincing evidence that the requirements of
 18 subsections (4)(b)(i) and (4)(b)(ii) are met, the board
 19 shall consider the following factors:
 20 (i) whether there are present or projected water
 21 shortages within the state of Montana;
 22 (ii) whether the water that is the subject of the
 23 application could feasibly be transported to alleviate water
 24 shortages within the state of Montana;
 25 (iii) the supply and sources of water available to the

1 applicant in the state where the applicant intends to use
 2 the water; and
 3 (iv) the demands placed on the applicant's supply in
 4 the state where the applicant intends to use the water.
 5 (d) When applying for a reservation to withdraw and
 6 transport water for use outside the state, the applicant
 7 shall submit to and comply with the laws of the state of
 8 Montana governing the appropriation, lease, use, and
 9 reservation of water.
 10 ~~4~~(5) If the purpose of the reservation requires
 11 construction of a storage or diversion facility, the
 12 applicant shall establish to the satisfaction of the board
 13 that there will be progress toward completion of the
 14 facility and accomplishment of the purpose with reasonable
 15 diligence in accordance with an established plan.
 16 ~~5~~(6) The board shall limit any reservations after
 17 May 9, 1979, for maintenance of minimum flow, level, or
 18 quality of water that it awards at any point on a stream or
 19 river to a maximum of 50% of the average annual flow of
 20 record on gauged streams. Ungauged streams can be allocated
 21 at the discretion of the board.
 22 ~~6~~(7) After the adoption of an order reserving
 23 waters, the department may reject an application and refuse
 24 a permit for the appropriation of reserved waters or may,
 25 with the approval of the board, issue the permit subject to

1 such terms and conditions it considers necessary for the
2 protection of the objectives of the reservation.

3 ~~(7)~~(8) Any person desiring to use water reserved to a
4 conservation district for agricultural purposes shall make
5 application for such use with the district, and the district
6 upon approval of the application must inform the department
7 of the approved use. The department shall maintain records
8 of all uses of water reserved to conservation districts and
9 be responsible, when requested by the districts, for
10 rendering technical and administrative assistance within the
11 department's staffing and budgeting limitations in the
12 preparation and processing of such applications for the
13 conservation districts. The department shall, within its
14 staffing and budgeting limitations, complete any feasibility
15 study requested by the districts within 12 months of the
16 time the request was made. The board shall extend the time
17 allowed to develop a plan identifying projects for utilizing
18 a district's reservation so long as the conservation
19 district makes a good faith effort, within its staffing and
20 budget limitations, to develop a plan.

21 ~~(8)~~(9) A reservation under this section shall date
22 from the date the order reserving the water is adopted by
23 the board and shall not adversely affect any rights in
24 existence at that time.

25 ~~(9)~~(10) The board shall, periodically but at least once

1 every 10 years, review existing reservations to ensure that
2 the objectives of the reservation are being met. Where the
3 objectives of the reservation are not being met, the board
4 may extend, revoke, or modify the reservation.

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

22 ~~(11)~~(12) Nothing in this section vests the board with
23 the authority to alter a water right that is not a
24 reservation.

25 (13) The department shall undertake a program to

1 educate the public, other state agencies, and political
 2 subdivisions of the state as to the benefits of the
 3 reservation process and the procedures to be followed to
 4 secure the reservation of water. The department shall
 5 provide technical assistance to other state agencies and
 6 political subdivisions in applying for reservations under
 7 this section.

8 (14) Water reserved under this section is not subject
 9 to the state water leasing program established under
 10 [section 14]."

11 NEW SECTION. Section 17. Reservations within Missouri
 12 River basin. (1) The state or any agency or political
 13 subdivision thereof or the United States or any agency
 14 thereof that desires to apply for a reservation of water in
 15 the Missouri River basin shall file a claim pursuant to
 16 85-2-316 no later than July 1, 1987.

17 (2) The department shall provide technical and
 18 financial assistance to other state agencies and political
 19 subdivisions in applying for reservations within the
 20 Missouri River basin.

21 (3) Before December 31, 1989, the board shall make a
 22 final determination in accordance with 85-2-316 on all
 23 applications filed before July 1, 1987, for reservations of
 24 water in the Missouri River basin.

25 (4) Water reservations approved by the board under

1 this section have a priority date of July 1, 1985. The board
 2 shall by order establish the relative priority of
 3 applications approved under this section.

4 Section 18. Section 85-2-112, MCA, is amended to read:

5 "85-2-112. Department duties. The department shall:

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

9 (2) prescribe procedures, forms, and requirements for
 10 applications, permits, certificates, claims of existing
 11 rights, and proceedings under this chapter and prescribe the
 12 information to be contained in any application, claim of
 13 existing right, or other document to be filed with the
 14 department under this chapter not inconsistent with the
 15 requirements of this chapter;

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

21 (4) in cooperation with other state agencies,
 22 institutions, colleges, and universities, establish and
 23 maintain a centralized and efficient water resources data
 24 management system sufficient to make available and readily
 25 accessible, in a usable format, to state agencies and other

1 interested persons, information on the state's water
 2 resources, out-of-state water resources that affect the
 3 state, existing and potential uses, and existing and
 4 potential demand. All other state agencies, institutions,
 5 and colleges and universities shall cooperate with the
 6 department in the development and maintenance of this
 7 system.

8 ~~(4)~~(5) cooperate with, assist, advise, and coordinate
 9 plans and activities with the federal, state, and local
 10 agencies in matters relating to this chapter;

11 ~~(5)~~(6) upon request by any person, cooperate with,
 12 assist, and advise that person in matters pertaining to
 13 measuring water or filing claims of existing rights with a
 14 district court under this chapter;

15 ~~(6)~~(7) adopt rules necessary to reject, modify, or
 16 condition permit applications in highly appropriated basins
 17 or subbasins as provided in 85-2-319."

18 Section 19. Section 85-1-203, MCA, is amended to read:

19 "85-1-203. State water plan. (1) The department shall
 20 gather from any source reliable information relating to
 21 Montana's water resources and prepare therefrom a continuing
 22 comprehensive inventory of the water resources of the state.
 23 In preparing this inventory, the department may conduct
 24 studies; adopt studies made by other competent water
 25 resource groups, including federal, regional, state, or

1 private agencies; perform research or employ other competent
 2 agencies to perform research on a contract basis; and hold
 3 public hearings in affected areas at which all interested
 4 parties shall be given an opportunity to appear.

5 (2) The department shall formulate and, with the
 6 approval of the board, adopt and from time to time amend,
 7 extend, or add to a comprehensive, coordinated multiple-use
 8 water resources plan known as the "state water plan". The
 9 state water plan may be formulated and adopted in sections,
 10 these sections corresponding with hydrologic divisions of
 11 the state. The state water plan shall set out a progressive
 12 program for the conservation, development, and utilization
 13 of the state's water resources and propose the most
 14 effective means by which these water resources may be
 15 applied for the benefit of the people, with due
 16 consideration of alternative uses and combinations of uses.
 17 Before adoption of the state water plan or any section
 18 thereof, the department shall hold public hearings in the
 19 state or in an area of the state encompassed by a section
 20 thereof if adoption of a section is proposed. Notice of the
 21 hearing or hearings shall be published for 2 consecutive
 22 weeks in a newspaper of general county circulation in each
 23 county encompassed by the proposed plan or section thereof
 24 at least 30 days prior to the hearing.

25 (3) The department shall submit to the water policy

1 committee established in [section 21] and to each general
 2 session of the legislature the state water plan or any
 3 section thereof or amendments, additions, or revisions
 4 thereto which the department has formulated and adopted.

5 (4) The department shall prepare a continuing
 6 inventory of the groundwater resources of the state. The
 7 groundwater inventory shall be included in the comprehensive
 8 water resources inventory described in subsection (1) above
 9 but shall be a separate component thereof.

10 (5) The department shall publish the comprehensive
 11 inventory, the state water plan, the groundwater inventory,
 12 or any part of each, and the department may assess and
 13 collect a reasonable charge for these publications.

14 (6) In developing and revising the state water plan as
 15 provided in this section, the department shall consult with
 16 the water policy committee established in [section 21] and
 17 solicit the advice of the committee in carrying out its
 18 duties under this section."

19 Section 20. Section 85-1-621, MCA, is amended to read:

20 "85-1-621. Report to the legislature. The department
 21 shall prepare a biennial report to the legislature
 22 describing the status of the water development program. The
 23 report must describe ongoing projects and activities and
 24 those which have been completed during the biennium. The
 25 report must identify and rank in order of priority the

1 projects for which the department desires to seek
 2 congressional authorization and funding and the efforts the
 3 department will undertake in attempting to secure such
 4 authorization and funding. The report must also describe
 5 proposed projects and activities for the coming biennium and
 6 recommendations for necessary appropriations. A copy of the
 7 report shall be submitted to the president of the senate and
 8 the speaker of the house, to the members of the water policy
 9 committee established in [section 21], and to such other
 10 members of the legislature as may request a copy."

11 NEW SECTION. Section 21. Water policy committee.

12 (1) There is a permanent water policy committee of the
 13 legislature. The committee consists of eight members. The
 14 senate committee on committees and the speaker of the house
 15 of representatives shall each appoint four members on a
 16 bipartisan basis. The committee shall elect its chairman
 17 and vice-chairman. The committee shall meet as often as
 18 necessary, including during the interim between sessions, to
 19 perform the duties specified within this section.

20 (2) On a continuing basis, the committee shall:

21 (a) advise the legislature on the adequacy of the
 22 state's water policy and of important state, regional,
 23 national, and international developments which affect
 24 Montana's water resources;

25 (b) oversee the policies and activities of the

1 department of natural resources and conservation, other
2 state executive agencies, and other state institutions, as
3 they affect the water resources of the state; and

4 (c) communicate with the public on matters of water
5 policy as well as the water resources of the state.

6 (3) On a regular basis, the committee shall:

7 (a) analyze and comment on the state water plan
8 required by 85-1-203, when filed by the department;

9 (b) analyze and comment on the report of the status of
10 the state's water development program required by 85-1-621,
11 when filed by the department;

12 (c) analyze and comment on water-related research
13 undertaken by any state agency, institution, college, or
14 university;

15 (d) analyze, verify, and comment on the adequacy of
16 and information contained in the water resources data
17 management system maintained by the department under
18 85-2-112; and

19 (e) report to the legislature, not less than once
20 every biennium.

21 (4) The environmental quality council shall provide
22 staff assistance to the committee. The committee may
23 contract with experts and consultants, in addition to
24 receiving assistance from the environmental quality council,
25 in carrying out its duties under this section.

1 Section 22. Section 85-2-122, MCA, is amended to read:
2 "85-2-122. Penalties. A person who violates or refuses
3 or neglects to comply with ~~85-2-301, 85-2-402(i), and~~
4 ~~85-2-403(i)~~ the provisions of this chapter, any order of the
5 department, or any rule of the board is guilty of a
6 misdemeanor."

7 NEW SECTION. Section 23. Extension of authority. Any
8 existing authority of the board and the department of
9 natural resources and conservation to make rules on the
10 subject of the provisions of this act is extended to the
11 provisions of this act.

12 Section 24. Section 7, Chapter 706, Laws of 1983, is
13 amended to read:

14 "Section 7. Termination date. ~~This act~~ Section 4 of
15 [this act] terminates July 1, 1985. The other sections do
16 not terminate and are permanent law."

17 NEW SECTION. Section 25. Repealer. Section 85-2-104,
18 MCA, is repealed.

19 NEW SECTION. Section 26. Codification instruction.
20 Sections 14, 17, and 21 are intended to be codified as an
21 integral part of Title 85, chapter 2, and the provisions of
22 Title 85, chapter 2, apply to sections 14, 17, and 21.

23 NEW SECTION. Section 27. Severability. If a part of
24 this act is invalid, all valid parts that are severable from
25 the invalid part remain in effect. If a part of this act is

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

4 NEW SECTION. Section 28. Applicability. This act
5 applies to all permit applications, change in appropriation
6 right applications, water sales and lease applications, and
7 reservation applications filed and pending with the
8 department on July 1, 1985, but upon which a hearing under
9 Title 85, chapter 2, has not yet commenced.

10 NEW SECTION. Section 29. Effective date. This act is
11 effective July 1, 1985.

-End-

STATE OF MONTANA

REQUEST NO. FNN 518-85

FISCAL NOTE

Form BD-15

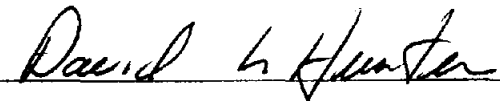
In compliance with a written request received March 15, _____ 19 85, there is hereby submitted a Fiscal Note for House Bill 680 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 680 establishes a comprehensive mechanism that will allow Montana to properly control the allocation and use of its water resources. The bill broadens the criteria for evaluating applications submitted pursuant to the Water Use Act; authorizes a water leasing program to be administered by the Department of Natural Resources and Conservation (DNRC); subjects pipelines of certain sizes to certification under the Major Facility Siting Act; calls for the completion of a basin-wide water reservation proceeding in the Missouri Basin of Montana. Directs the DNRC to develop a water resources data management system, seek federal funding for water project development in Montana, and increase efforts to develop the state water plan.

ASSUMPTIONS:

1. Existing staff and funding resources (including applicant filing fees, etc.) are sufficient for DNRC administration of revised provisions in the water use and Major Facility Siting Acts.
2. Additional DNRC staff and funding will be needed to implement the other provisions of the bill.
3. The proposed budget only covers the expense of preparing applications for water reservations in the Missouri Basin. The funds needed to process the applications (i.e., hearings, EIS, etc.) will be appropriated during the 1988-89 biennium.
4. The budget includes the contracted services funding needed to assure that interested municipalities and conservation districts can prepare adequate water reservation applications. Applications will be submitted by 25 conservation districts and 12 municipalities. The expense of preparing such applications will be equivalent to \$12,000 per conservation district and \$5,000 per municipality.
5. Revenue will, in time, be derived from the water leasing program authorized by the bill. Such revenues will not be forthcoming during the 1986-87 biennium.



BUDGET DIRECTOR
Office of Budget and Program Planning

Date: March 20, 1985

HB 680

FISCAL IMPACT:

<u>Expenditures</u>	<u>FY 86</u>		<u>FY 87</u>	
	<u>Current</u>	<u>Proposed</u>	<u>Current</u>	<u>Proposed</u>
Personal Services	\$ -0-	\$180,930	\$ -0-	\$142,650
Operating Expenses	-0-	275,100	-0-	306,350
Total Cost	\$ -0-	\$456,030	\$ -0-	\$449,000
General Fund	\$ -0-	\$389,530	\$ -0-	\$372,500
State Special	\$ -0-	\$ 16,225	\$ -0-	\$ 19,125
Federal Special	\$ -0-	\$ 49,875	\$ -0-	\$ 57,375

EFFECT ON COUNTY OR OTHER LOCAL REVENUE:

None

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Committing funding to do the application phase of the Missouri Basin reservation proceeding will require an additional appropriation for the 1988-89 biennium in order to complete the process (i.e., preparation of environmental impact statement, hearings, etc.).

TECHNICAL OR MECHANICAL DEFECTS OR CONFLICTS WITH EXISTING LEGISLATION:

None.

EXPLANATORY NOTE:

A separate appropriation bill being drafted by the Environmental Quality Council will include the expenditures presented in this fiscal note. That appropriation measure will also include projected costs of implementing other recommendations of the Interim Select Legislative Committee on Water Marketing.

APPROVED BY COMM. ON
NATURAL RESOURCES

1 HOUSE BILL NO. 680
2 INTRODUCED BY IVERSON, BLAYLOCK, HARP, SHAW,
3 ASAY, CODY, HOLLIDAY, HARPER, MARKS, NEUMAN,
4 ABRAMS, D. BROWN, VAN VALKENBURG, KADAS,
5 VINCENT, DONALDSON, NATHE, BRADLEY,
6 POFF, TVEIT, E. SMITH, BARDANOUE
7 BY REQUEST OF THE SELECT COMMITTEE ON WATER MARKETING
8
9 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING STATE WATER
10 POLICY TO MAXIMIZE MONTANA'S INTERESTS IN THE INTERSTATE
11 ALLOCATION OF WATER; AMENDING CRITERIA FOR WATER
12 APPROPRIATION AND CHANGES IN APPROPRIATION; PROVIDING FOR A
13 LIMITED WATER LEASING PROGRAM; EXEMPTING WATER RESERVATIONS
14 FROM THE LEASING PROGRAM; PLACING CERTAIN PIPELINES UNDER
15 THE MONTANA MAJOR FACILITY SITING ACT; PROVIDING FOR WATER
16 RESERVATIONS IN THE MISSOURI RIVER BASIN; ESTABLISHING A
17 WATER RESOURCES DATA MANAGEMENT SYSTEM; CREATING A PERMANENT
18 WATER POLICY COMMITTEE; REPEALING THE BAN ON THE USE OF
19 WATER FOR COAL SLURRY; AMENDING SECTIONS 75-20-104,
20 75-20-216, 75-20-218, 75-20-303, 75-20-304, 75-20-1202,
21 85-1-203 THROUGH 85-1-205, 85-1-621, 85-2-102, 85-2-112,
22 85-2-122, 85-2-124, 85-2-301, 85-2-311, 85-2-312, 85-2-316,
23 85-2-402, MCA, AND SECTION 7, CHAPTER 706, LAWS OF 1983;
24 REPEALING SECTION 85-2-104, MCA; AND PROVIDING AN EFFECTIVE
25 DATE AND AN APPLICABILITY DATE."

1
2 WHEREAS, the Select Committee on Water Marketing was
3 commissioned by the 1983 Legislature to undertake a study of
4 the advantages and disadvantages of water marketing; and
5 WHEREAS, the Select Committee in completing its study
6 determined that Montana needs to address broader questions
7 of water policy in order to secure Montana's interests in
8 allocation and management of state waters; and
9 WHEREAS, the Select Committee has presented a
10 comprehensive package of recommendations that must be
11 considered as a whole; and
12 WHEREAS, these recommendations serve to revise
13 Montana's water policy in order to maximize Montana's
14 authority over management of state waters and other natural
15 resources and to conserve water for existing and future
16 beneficial uses by Montanans.
17 THEREFORE, the Legislature of the State of Montana
18 finds that this legislation and other recommendations of the
19 Select Committee on Water Marketing constitute an
20 appropriate revision of state water policy necessary to
21 secure Montana's interests for present and future benefit to
22 Montanans.
23
24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
25 Section 1. Section 85-2-102, MCA, is amended to read:

SECOND READING

1 "85-2-102. Definitions. Unless the context requires
2 otherwise, in this chapter the following definitions apply:

3 (1) "Appropriate" means to divert, impound, or
4 withdraw (including by stock for stock water) a quantity of
5 water or, in the case of a public agency, to reserve water
6 in accordance with 85-2-316.

7 (2) "Beneficial use", unless otherwise provided,
8 means:

9 (a) a use of water for the benefit of the
10 appropriator, other persons, or the public, including but
11 not limited to agricultural (including stock water),
12 domestic, fish and wildlife, industrial, irrigation, mining,
13 municipal, power, and recreational uses; and

14 (b) a use of water appropriated by the department for
15 the state water leasing program under [section 14 12] and of
16 water leased under a valid lease issued by the department
17 under [section 14 12].

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

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

22 (5) "Change in appropriation right" means a change in
23 the place of diversion, the place of use, the purpose of
24 use, or the place of storage.

25 (5)(6) "Declaration" means the declaration of an

1 existing right filed with the department under section 8,
2 Chapter 452, Laws of 1973.

3 (6)(7) "Department" means the department of natural
4 resources and conservation provided for in Title 2, chapter
5 15, part 33.

6 (7)(8) "Existing right" means a right to the use of
7 water which would be protected under the law as it existed
8 prior to July 1, 1973.

9 (8)(9) "Groundwater" means any water beneath the land
10 surface or beneath the bed of a stream, lake, reservoir, or
11 other body of surface water, and which is not a part of that
12 surface water.

13 (9)(10) "Permit" means the permit to appropriate issued
14 by the department under 85-2-301 through 85-2-303 and
15 85-2-306 through 85-2-314.

16 (10)(11) "Person" means an individual, association,
17 partnership, corporation, state agency, political
18 subdivision, the United States or any agency thereof, or any
19 other entity.

20 (11)(12) "Political subdivision" means any county,
21 incorporated city or town, public corporation, or district
22 created pursuant to state law or other public body of the
23 state empowered to appropriate water but not a private
24 corporation, association, or group.

25 (12) "Slurry" means a mixture of water and insoluble

1 ~~material-~~

2 (13) "Waste" means the unreasonable loss of water
3 through the design or negligent operation of an
4 appropriation or water distribution facility or the
5 application of water to anything but a beneficial use.

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

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

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

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

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

20 Section 2. Section 85-1-204, MCA, is amended to read:

21 "85-1-204. Department powers over state waters. (1)
22 The department, with the approval of the board, may sell,
23 lease, and otherwise dispose of all waters which may be
24 impounded under this chapter, and the water may be sold for
25 the purpose of irrigation, development of power, watering of

1 stock, or any other purpose. The department may also lease
2 water under the state water leasing program established
3 under the provisions of [section 4 12]. To the extent that
4 it may be necessary to carry out this chapter and subject to
5 a compliance with the other provisions of this chapter, the
6 department has full control of all the water of the state
7 not under the exclusive control of the United States and not
8 vested in private ownership, and it shall take such steps as
9 may be necessary to appropriate and conserve the same for
10 the use of the people. The authority of the department
11 conferred by this chapter extends and applies to rights to
12 the natural flow of the waters of this state which it may
13 acquire, with the approval of the board, by condemnation,
14 purchase, exchange, appropriation, or agreement.

15 (2) For the purpose of regulating the diversion of
16 those waters, the department may enter upon the means and
17 place of use of all appropriators for making surveys of
18 respective rights and seasonal needs.

19 (3) The department may take into consideration the
20 decrees of the courts of this state having jurisdiction
21 which purport to adjudicate the waters of a stream or its
22 tributaries, and a fair, reasonable, and equitable
23 reconciliation shall be made between the claimants asserting
24 rights under different decrees and between decreed rights
25 and asserted rights of appropriation not adjudicated by any

1 court.

2 (4) The department, at its discretion, may hold
 3 hearings relating to the rights of respective claimants
 4 after first giving such notice as it considers appropriate
 5 and make findings of the date and quantity of appropriation
 6 and use of all claimants which the department will recognize
 7 and observe in diverting the waters which it owns. The
 8 department may police and distribute to the owner of the
 9 recognized appropriation the waters due him upon request and
 10 under terms agreed upon.

11 (5) The department, when engaged in controlling and
 12 dividing the natural flow of a stream under the authority
 13 granted by this chapter, is exercising a police power of the
 14 state, and water commissioners appointed by any court may
 15 not deprive the department of any of the waters owned or
 16 administered under agreement with respective owners. The
 17 owner of a prior right contending that the department is not
 18 recognizing and respecting the appropriation may resort to a
 19 court for the purpose of determining whether or not the
 20 rights of the claimant have been invaded, and the department
 21 shall observe the terms of the final decree.

22 (6) When the department impounds or acquires the right
 23 of appropriation of the waters of a stream it may divert or
 24 authorize the diversion at any point on the stream or any
 25 portion thereof when it is done without injury to a prior

1 appropriator."

2 Section 3. Section 85-2-301, MCA, is amended to read:
 3 "85-2-301. Right to appropriate. (1) After July 1,
 4 1973, a person may not appropriate water except as provided
 5 in this chapter. A person may only appropriate water for a
 6 beneficial use.

7 (2) (a) Only the department may appropriate water by
 8 permit under ~~85-2-311~~ in either of the following instances:

9 (i) for transport outside the following river basins:

10 (A) the Clark Fork River and its tributaries to its
 11 confluence with Lake Pend Oreille in Idaho;

12 (B) the Kootenai River and its tributaries to its
 13 confluence with Kootenay Lake in British Columbia;

14 (C) the St. Mary River and its tributaries to its
 15 confluence with the Oldman River in Alberta;

16 (D) the Little Missouri River and its tributaries to
 17 its confluence with Lake Sakakawea in North Dakota;

18 (E) the Missouri River and its tributaries to its
 19 confluence with the Yellowstone River in North Dakota; and

20 (F) the Yellowstone River to its confluence with the
 21 Missouri River in North Dakota; or

22 (ii) whenever water in excess of 4,000 acre-feet a year
 23 and 5.5 cubic feet per second, for any use, is to be
 24 consumed.

25 (b) Water for these purposes or in these amounts may

1 be leased from the department by any person under the
 2 provisions of [section 4 12].

3 (3) A right to appropriate water may not be acquired
 4 by any other method, including by adverse use, adverse
 5 possession, prescription, or estoppel. The method prescribed
 6 by this chapter is exclusive."

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

8 "85-2-311. Criteria for issuance of permit. (1) Except
 9 as provided in subsections (2) ~~and (3)~~ through (4), the
 10 department shall issue a permit if the applicant proves by
 11 substantial credible evidence that the following criteria
 12 are met:

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

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

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

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

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

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

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

1 (e) 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 (2) ~~(a)~~ The department may not issue a permit for an
 5 appropriation of ~~10,000~~ 4,000 or more acre-feet of water a
 6 year ~~or 15~~ and 5.5 or more cubic feet per second of water
 7 unless ~~it affirmatively finds~~ the applicant proves by clear
 8 and convincing evidence that:

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

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

13 ~~(C)~~(c) the proposed appropriation is a reasonable
 14 use. Such a finding shall be based on a consideration of the
 15 following:

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

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

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

23 ~~(D)~~(iii) the effects on the quantity, and quality, ~~and~~
 24 potability of water for existing beneficial uses in the
 25 source of supply;

1 (iv) the availability and feasibility of using
 2 low-quality water for the purpose for which application has
 3 been made;

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

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

10 ~~(b)--A permit for an appropriation for a diversion--for~~
 11 ~~a--consumptive--use--of--10,000--or--more--acre--feet--of--water--a~~
 12 ~~year--or--15--or--more--cubic--feet--per--second--of--water--under--this~~
 13 ~~subsection--may--not--be--issued--unless--the--department--petitions~~
 14 ~~the--legislature--and--the--legislature--affirms--the--findings--of~~
 15 ~~the--department.~~

16 (3) (a) The state of Montana has long recognized the
 17 importance of conserving its public waters and the necessity
 18 to maintain adequate water supplies for the state's water
 19 requirements. Although the state of Montana also recognizes
 20 that, under appropriate conditions, the out-of-state
 21 transportation and use of its public waters are not in
 22 conflict with the public welfare of its citizens or the
 23 conservation of its waters, the criteria in this subsection
 24 (3) must be met before out-of-state use may occur.

25 (b) The department may not issue a permit for the

1 appropriation of water for withdrawal and transportation for
 2 use outside the state unless the applicant proves by clear
 3 and convincing evidence that:

4 (i) depending on the volume of water diverted or
 5 consumed, the applicable criteria and procedures of
 6 subsection (1) or (2) are met;

7 (ii) the proposed out-of-state use of water is not
 8 contrary to water conservation in Montana; and

9 (iii) the proposed out-of-state use of water is not
 10 otherwise detrimental to the public welfare of the citizens
 11 of Montana.

12 (c) In determining whether the applicant has proved by
 13 clear and convincing evidence that the requirements of
 14 subsections (3)(b)(ii) and (3)(b)(iii) are met, the
 15 department shall consider the following factors:

16 (i) whether there are present or projected water
 17 shortages within the state of Montana;

18 (ii) whether the water that is the subject of the
 19 application could feasibly be transported to alleviate water
 20 shortages within the state of Montana;

21 (iii) the supply and sources of water available to the
 22 applicant in the state where the applicant intends to use
 23 the water; and

24 (iv) the demands placed on the applicant's supply in
 25 the state where the applicant intends to use the water.

1 (d) When applying for a permit or a lease to withdraw
 2 and transport water for use outside the state, the applicant
 3 shall submit to and comply with the laws of the state of
 4 Montana governing the appropriation, lease, and use of
 5 water.

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

18 Section 5. Section 85-2-312, MCA, is amended to read:
 19 "85-2-312. Terms of permit. (1) The department may
 20 issue a permit for less than the amount of water requested,
 21 but in no case may it issue a permit for more water than is
 22 requested or than can be beneficially used without waste for
 23 the purpose stated in the application. The department may
 24 require modification of plans and specifications for the
 25 appropriation or related diversion or construction. It Based

1 ~~upon the criteria listed in 85-2-311, the~~ THE department may
 2 issue a permit subject to terms, conditions, restrictions,
 3 and limitations it considers necessary ~~to protect the rights~~
 4 ~~of other appropriators~~ TO SATISFY THE CRITERIA LISTED IN
 5 85-2-311, and it may issue temporary or seasonal permits. A
 6 permit shall be issued subject to existing rights and any
 7 final determination of those rights made under this chapter.

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

19 (3) The original of the permit shall be sent to the
 20 permittee, and a copy shall be kept in the office of the
 21 department in Helena.

22 (4) The department shall provide to the county clerk
 23 and recorder of the county wherein the point of diversion or
 24 place of use is located quarterly reports and an annual
 25 summary report of all water right permits, certificates, and

1 change approvals issued by the department within the
2 county."

3 Section 6. Section 85-2-124, MCA, is amended to read:
4 "85-2-124. Fees for environmental impact statements.

5 (1) Whenever the department determines that the filing of an
6 application (or a combination of applications) for a permit
7 or approval under this chapter requires the preparation of
8 an environmental impact statement as prescribed by the
9 Montana Environmental Policy Act and the application (or
10 combination of applications) involves the use of ~~107000~~
11 4,000 or more acre-feet per year ~~or 15~~ and 5.5 or more cubic
12 feet per second of water, the applicant shall pay to the
13 department the fee prescribed in this section. The
14 department shall notify the applicant in writing within 90
15 days of receipt of a correct and complete application (or a
16 combination of applications) if it determines that an
17 environmental impact statement and fee is required.

18 (2) Upon notification by the department under
19 subsection (1), the applicant shall pay a fee based upon the
20 estimated cost of constructing, repairing, or changing the
21 appropriation and diversion facilities as herein provided.
22 The maximum fee that shall be paid to the department may not
23 exceed the fees set forth in the following declining scale:
24 2% of the estimated cost up to \$1 million; plus 1% of the
25 estimated cost over \$1 million and up to \$20 million; plus

1 1/2 of 1% of the estimated cost over \$20 million and up to
2 \$100 million; plus 1/4 of 1% of the estimated cost over \$100
3 million and up to \$300 million; plus 1/8 of 1% of the
4 estimated cost over \$300 million. The fee shall be
5 deposited in the state special revenue fund to be used by
6 the department only to comply with the Montana Environmental
7 Policy Act in connection with the application(s). Any
8 amounts paid by the applicant but not actually expended by
9 the department shall be refunded to the applicant.

10 (3) The department and the applicant may determine by
11 agreement the estimated cost of any facility for purposes of
12 computing the amount of the fee to be paid to the department
13 by the applicant. The department may contract with an
14 applicant for:

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

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

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

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

7 (5) No fee as prescribed by this section may be
 8 assessed against an applicant for a permit or approval if
 9 the applicant has also filed an application for a
 10 certificate of environmental compatibility or public need
 11 pursuant to the Montana Major Facility Siting Act and the
 12 appropriation or use of water involved in the application(s)
 13 for permit or approval has been or will be studied by the
 14 department pursuant to that act.

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

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

22 (8) The department may in its discretion rely upon the
 23 environmental studies, investigations, reports, and
 24 assessments made by any other state agency or any person,
 25 including any applicant, in the preparation of its

1 environmental impact statement."

2 Section 7. Section 85-2-402, MCA, is amended to read:

3 "85-2-402. Changes in appropriation rights. ~~(1)--An~~
 4 ~~appropriator may not change the place of diversion, place of~~
 5 ~~use, purpose of use, or place of storage except as permitted~~
 6 ~~under this section and approved by the department.~~

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

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

23 ~~(4)--The department may approve a change subject to~~
 24 ~~such terms, conditions, restrictions, and limitations as it~~
 25 ~~considers necessary to protect the rights of other~~

1 appropriators, including limitations on the time for
2 completion of the change.

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

11 (6) Without obtaining prior approval from the
12 department, an appropriator may not sever all or any part of
13 an appropriation right from the land to which it is
14 appurtenant, sell the appropriation right for other purposes
15 or to other lands, or make the appropriation right
16 appurtenant to other lands. The department shall approve the
17 proposed change if it determines that the proposed change
18 will not adversely affect the water rights of other persons.
19 If the department determines that the proposed change might
20 adversely affect the water rights of other persons, notice
21 of the proposed change must be given in accordance with
22 85-2-307. If the department then determines that an
23 objection filed by a person whose water rights may be
24 affected states a valid objection to the proposed change,
25 the department shall hold a hearing thereon prior to its

1 approval or denial of the proposed change. Objections must
2 meet the requirements of 85-2-308, and hearings must be held
3 in accordance with 85-2-309. (1) An appropriator may not
4 make a change in an appropriation right except as permitted
5 under this section and with the approval of the department
6 or, if applicable, of the legislature.

7 (2) Except as provided in subsections (3) through (5),
8 the department shall approve a change in appropriation right
9 if the appropriator proves by substantial credible evidence
10 that the following criteria are met:

11 (a) The proposed use will not adversely affect the
12 water rights of other persons or other planned uses or
13 developments for which a permit has been issued or for which
14 water has been reserved.

15 (b) The proposed means of diversion, construction, and
16 operation of the appropriation works are adequate.

17 (c) The proposed use of water is a beneficial use.

18 (3) The department may not approve a change in purpose
19 of use or place of use of an appropriation of 4,000 or more
20 acre-feet of water a year and 5.5 or more cubic feet per
21 second of water unless the appropriator proves by clear and
22 convincing evidence that:

23 (a) the criteria in subsection (2) are met;

24 (b) the proposed change is a reasonable use. A
25 finding of reasonable use must be based on a consideration

1 of:

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

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

8 (iii) the effects on the quantity and quality of water
 9 for existing uses in the source of supply;

10 (iv) the availability and feasibility of using
 11 low-quality water for the purpose for which application has
 12 been made;

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

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

19 (4) The department may not approve a change in purpose
 20 of use or place of use for a diversion that results in 4,000
 21 or more acre-feet of water a year and 5.5 or more cubic feet
 22 per second of water being consumed unless:

23 (a) the applicant proves by clear and convincing
 24 evidence and the department finds that the criteria in
 25 subsections (2) and (3) are met; and

1 (b) the department then petitions the legislature and
 2 the legislature affirms the decision of the department after
 3 a public hearing.

4 (5) (a) The state of Montana has long recognized the
 5 importance of conserving its public waters and the necessity
 6 to maintain adequate water supplies for the state's water
 7 requirements. Although the state of Montana also recognizes
 8 that, under appropriate conditions, the out-of-state
 9 transportation and use of its public waters are not in
 10 conflict with the public welfare of its citizens or the
 11 conservation of its waters, the following criteria must be
 12 met before out-of-state use may occur:

13 (b) The department and, if applicable, the legislature
 14 may not approve a change in appropriation right for the
 15 withdrawal and transportation of appropriated water for use
 16 outside the state unless the appropriator proves by clear
 17 and convincing evidence and, if applicable, the legislature
 18 approves after a public hearing that:

19 (i) depending on the volume of water diverted or
 20 consumed, the applicable criteria and procedures of
 21 subsection (2) or (3) are met;

22 (ii) the proposed out-of-state use of water is not
 23 contrary to water conservation in Montana; and

24 (iii) the proposed out-of-state use of water is not
 25 otherwise detrimental to the public welfare of the citizens

1 of Montana.

2 (c) In determining whether the appropriator has proved
 3 by clear and convincing evidence that the requirements of
 4 subsections (5)(b)(ii) and (5)(b)(iii) will be met, the
 5 department and, if applicable, the legislature shall
 6 consider the following factors:

7 (i) whether there are present or projected water
 8 shortages within the state of Montana;

9 (ii) whether the water that is the subject of the
 10 proposed change in appropriation might feasibly be
 11 transported to alleviate water shortages within the state of
 12 Montana;

13 (iii) the supply and sources of water available to the
 14 applicant in the state where the applicant intends to use
 15 the water; and

16 (iv) the demands placed on the applicant's supply in
 17 the state where the applicant intends to use the water.

18 (d) When applying for a change in appropriation right
 19 to withdraw and transport water for use outside the state,
 20 the applicant shall submit to and comply with the laws of
 21 the state of Montana governing the appropriation and use of
 22 water.

23 (6) For any application for a change in appropriation
 24 right involving 4,000 or more acre-feet of water a year and
 25 5.5 or more cubic feet per second of water, the department

1 shall give notice of the proposed change in accordance with
 2 85-2-307 and shall hold a hearing in accordance with
 3 85-2-309 prior to its approval or denial of the proposed
 4 change. The department shall provide notice and may hold a
 5 hearing upon any other proposed change if it determines that
 6 such a change might adversely affect the rights of other
 7 persons.

8 (7) The department or the legislature, if applicable,
 9 may approve a change subject to such terms, conditions,
 10 restrictions, and limitations as it considers necessary to
 11 ~~protect the rights of other persons and~~ satisfy the criteria
 12 of this section, including limitations on the time for
 13 completion of the change.

14 (8) If a change is not completed as approved by the
 15 department or legislature or if the terms, conditions,
 16 restrictions, and limitations of the change approval are not
 17 complied with, the department may, after notice and
 18 opportunity for hearing, require the appropriator to show
 19 cause why the change approval should not be modified or
 20 revoked. If the appropriator fails to show sufficient
 21 cause, the department may modify or revoke the change
 22 approval.

23 †††(9) The original of a change approval issued by the
 24 department must be sent to the applicant, and a duplicate
 25 must be kept in the office of the department in Helena.

1 ~~(8)~~(10) A person holding an issued permit or change
 2 approval that has not been perfected may change the place of
 3 diversion, place of use, purpose of use, or place of storage
 4 by filing an application for change pursuant to this
 5 section.

6 (11) A change in appropriation right contrary to the
 7 provisions of this section is invalid. No officer, agent,
 8 agency, or employee of the state may knowingly permit, aid,
 9 or assist in any manner such unauthorized change in
 10 appropriation right. No person or corporation may, directly
 11 or indirectly, personally or through an agent, officer, or
 12 employee, attempt to change an appropriation right except in
 13 accordance with this section."

14 Section 8. Section 75-20-104, MCA, is amended to read:

15 "75-20-104. Definitions. In this chapter, unless the
 16 context requires otherwise, the following definitions apply:

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

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

23 (3) "Associated facilities" includes but is not
 24 limited to transportation links of any kind, aqueducts,
 25 diversion dams, PIPELINES, transmission substations, storage

1 ponds, reservoirs, and any other device or equipment
 2 associated with the production or delivery of the energy
 3 form or product produced by a facility, except that the term
 4 does not include a facility OR A NATURAL GAS OR CRUDE OIL
 5 GATHERING LINE 17 INCHES OR LESS IN DIAMETER.

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

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

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

14 (7) "Commence to construct" means:

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

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

1 other underground exploration, investigation, or
2 experimentation;

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

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

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

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

17 (10) "Facility" means:

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

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

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

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

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

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

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

23 ~~(c) each pipeline and associated facilities designed~~
24 ~~for or capable of transporting gas (except for natural gas),~~
25 ~~water, or liquid hydrocarbon products from or to a facility~~

1 ~~located within or without this state of the size indicated~~
 2 ~~in subsection (10)(a) of this section;~~

3 ~~(d)(C) each pipeline, WHETHER PARTIALLY OR WHOLLY~~
 4 ~~WITHIN THE STATE, greater than 17 inches in diameter and 30~~
 5 ~~miles in length, and associated facilities;~~

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

13 ~~(e)(f)(E) any underground in situ gasification of~~
 14 ~~coal.~~

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

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

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

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

3 Section 9, Section 75-20-216, MEA, is amended to read:
 4 "75-20-216. Study, evaluation, and report on proposed
 5 facility---assistance by other agencies:---(1) After receipt
 6 of an application, the department and department of health
 7 shall within 90 days notify the applicant in writing that:
 8 (a) the application is in compliance and is accepted
 9 as complete; or

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

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

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

1 of health or the board of health satisfies the review
 2 requirements by those agencies and shall be acceptable in
 3 lieu of an environmental impact statement under the Montana
 4 Environmental Policy Act. A copy of the decision, opinion,
 5 order, certification, or permit shall be served upon the
 6 department and the board and shall be utilized as part of
 7 their final site selection process. Prior to the issuance of
 8 a preliminary decision by the department of health and
 9 pursuant to rules adopted by the board of health, the
 10 department of health shall provide an opportunity for public
 11 review and comment.
 12 (4) Within 22 months following acceptance of an
 13 application for a facility as defined in (a) and (d)(e) of
 14 75-20-104(10) and for a facility as defined in (b) and (c)
 15 through (d) of 75-20-104(10) which is more than 30 miles in
 16 length and within 1 year for a facility as defined in (b)
 17 and (c) through (d) of 75-20-104(10) which is 30 miles or
 18 less in length, the department shall make a report to the
 19 board which shall contain the department's studies,
 20 evaluations, recommendations, other pertinent documents
 21 resulting from its study and evaluation, and an
 22 environmental impact statement or analysis prepared pursuant
 23 to the Montana Environmental Policy Act, if any. If the
 24 application is for a combination of two or more facilities,
 25 the department shall make its report to the board within the

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

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

13 Section 9. Section 75-20-218, MCA, is amended to read:
14 "75-20-218. Hearing date -- location -- department to
15 act as staff -- hearings to be held jointly. (1) Upon
16 receipt of the department's report submitted under
17 75-20-216, the board shall set a date for a hearing to begin
18 not more than 120 days after the receipt. ~~Except for those~~
19 ~~hearings-involving-applications-submitted-for-facilities--as~~
20 ~~defined--in--(b)--and--(c)--of--75-20-104(10);~~ certification
21 Certification hearings shall be conducted by the board in
22 the county seat of Lewis and Clark County or the county in
23 which the facility or the greater portion thereof is to be
24 located.

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

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

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

15 Section 10. Section 75-20-303, MCA, is amended to
16 read:

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

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

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

1 the following:

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

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

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

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

10 (iv) alternatives to the proposed facility;

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

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

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

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

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

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

1 time limit is 5 years.

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

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

13 ~~Section 12. Section 75-20-304, MCA, is amended to~~
14 ~~read:~~

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

24 ~~(2) The board may waive compliance with any of the~~
25 ~~provisions of this chapter upon receipt of notice by a~~

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

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

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

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

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

1 curtailed; and

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

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

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

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

~~(3) can be used in making a certification decision under this chapter.~~

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

Section 11. Section 75-20-1202, MCA, is amended to read:

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

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

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

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

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

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

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

NEW SECTION. Section 12. Water leasing program. (1) There is a water leasing program administered by the department on behalf of the state of Montana.

(2) The department may acquire rights to water needed for leasing under this program through appropriation of water in its own name or by agreement with or purchase from another holder of water rights.

(3) Water for leasing under the water leasing program must be obtained from the following sources:

(a) any existing or future reservoir in a basin concerning which a temporary preliminary decree, a preliminary decree under 85-2-231, or a final decree under 85-2-234 has been entered;

(b) Fort Peck Reservoir, if an agreement between the department and the federal government concerning the acquisition of water and the sharing of revenues with the state is in effect;

(c) Tiber, Canyon Ferry, Hungry Horse, or Yellowtail Reservoirs if and for so long as there is an agreement between the department and the federal government concerning the acquisition of water and sharing of revenues with the state from one or more of these reservoirs; and

(d) any other existing or future federal reservoir:

(i) located in a basin concerning which a temporary preliminary decree, a preliminary decree under 85-2-231, or

1 a final decree under 85-2-234 has been entered; and
 2 (ii) for which and for so long as there is an agreement
 3 between the department and the federal government concerning
 4 the acquisition of water and the sharing of revenues with
 5 the state.
 6 (4) Water may be leased for any beneficial use. The
 7 amount of water that can be leased under this program for
 8 all beneficial uses shall not exceed 50,000 acre-feet.
 9 (5) The term of any lease may not exceed 50 years. A
 10 term may be extended up to another 50 years if the
 11 department again determines the desirability of leasing by
 12 applying the considerations set forth in subsection (7). In
 13 making such a redetermination, the department may require
 14 the completion of an environmental impact statement in
 15 accordance with subsection (6).
 16 (6) The department shall require the completion of an
 17 environmental impact statement under the provisions of Title
 18 75, chapter 1, for lease applications that would result in
 19 the consumption of 4,000 acre-feet a year or more and 5.5
 20 cubic feet per second or more of water and for any other
 21 application for which an environmental impact statement is
 22 required by law. The department shall require the
 23 completion of an environmental impact statement whenever the
 24 cumulative effect of more than one application for a lease
 25 would constitute a probable significant environmental

1 impact.
 2 (7) Upon application by any person to lease water, the
 3 department shall make an initial determination of whether it
 4 is desirable for the department to lease water to the
 5 applicant. Such a determination of desirability shall be
 6 made solely on the following considerations:
 7 (a) the content of the environmental impact statement,
 8 if required;
 9 (b) whether there is sufficient water available under
 10 the water leasing program; and
 11 (c) whether the criteria, except as to legislative
 12 approval, set forth in 85-2-311 have been satisfied.
 13 (8) The department shall for any agreement require
 14 commercially reasonable terms and conditions, which may
 15 include the requirement that up to 25% of the water to be
 16 leased be made available to a potential user for any
 17 beneficial use upon payment by such user of the costs of
 18 tapping into and removing water from the applicant's
 19 project. The department may differentiate in pricing,
 20 depending on the proposed beneficial use of the water.
 21 (9) The lease of water or the use of water under a
 22 lease does not constitute a permit as provided in 85-2-102
 23 and does not establish a right to appropriate water within
 24 the meaning of Title 85, chapter 2, part 3.
 25 (10) For purposes of the water leasing program

1 established in this section, it is the intent of the
2 legislature that the state act as a proprietor.

3 Section 13. Section 85-1-205, MCA, is amended to read:

4 "85-1-205. Acquisition of water in federal reservoirs.

5 ~~{1}~~ The department may acquire water or water storage by
6 purchase option or agreement with the federal government
7 from any federal reservoir for the purpose of sale, rent, or
8 distribution for ~~industrial-and-other--uses~~ any beneficial
9 use. In such cases, the department is not required to
10 construct any diversion or appropriation facilities or
11 works, and it may sell, rent, or distribute such water at
12 such rates and under such terms and conditions as it
13 considers appropriate, ~~except-as-provided-in-subsection-(2).~~

14 ~~{2}--Until--a--final-decree-has-been-issued-pursuant-to~~
15 ~~85-2-234-concerning-the-waters-in-a-federal--reservoir,--the~~
16 ~~department--may--sell,--rent,--or-distribute-such-water-only~~
17 ~~after-a-permit-has-been-issued-to-an-applicant-for-purchase,~~
18 ~~rent,--or-distribution-of-water-in-accordance-with-part-3--of~~
19 ~~this-chapter."~~

20 Section 14. Section 85-2-316, MCA, is amended to read:

21 "85-2-316. Reservation of waters. (1) The state or any
22 political subdivision or agency thereof or the United States
23 or any agency thereof may apply to the board to reserve
24 waters for existing or future beneficial uses or to maintain
25 a minimum flow, level, or quality of water throughout the

1 year or at such periods or for such length of time as the
2 board designates.

3 (2) Water may be reserved only for existing or future
4 beneficial uses in the following river basins:

5 (a) the Clark Fork River and its tributaries to its
6 confluence with Lake Pend Oreille in Idaho;

7 (b) the Kootenai River and its tributaries to its
8 confluence with Kootenay Lake in British Columbia;

9 (c) the St. Mary River and its tributaries to its
10 confluence with the Oldman River in Alberta;

11 (d) the Little Missouri River and its tributaries to
12 its confluence with Lake Sakakawea in North Dakota;

13 (e) the Missouri River and its tributaries to its
14 confluence with the Yellowstone River in North Dakota; and

15 (f) the Yellowstone River to its confluence with the
16 Missouri River in North Dakota.

17 ~~{2}{3}~~ Upon receiving an application, the department
18 shall proceed in accordance with 85-2-307 through 85-2-309.
19 After the hearing provided in 85-2-309, the board shall
20 decide whether to reserve the water for the applicant. The
21 department's costs of giving notice, holding the hearing,
22 conducting investigations, and making records incurred in
23 acting upon the application to reserve water, except the
24 cost of salaries of the department's personnel, shall be
25 paid by the applicant. In addition, a reasonable proportion

1 of the department's cost of preparing an environmental
2 impact statement shall be paid by the applicant unless
3 waived by the department upon a showing of good cause by the
4 applicant.

5 ~~3~~(4) (a) The board may not adopt an order reserving
6 water unless the applicant establishes to the satisfaction
7 of the board:

8 ~~a~~(i) the purpose of the reservation;

9 ~~b~~(ii) the need for the reservation;

10 ~~c~~(iii) the amount of water necessary for the purpose
11 of the reservation;

12 ~~d~~(iv) that the reservation is in the public interest.

13 (b) In determining the public interest under
14 subsection (4)(a)(iv), the board may not adopt an order
15 reserving water for withdrawal and transport for use outside
16 the state unless the applicant proves by clear and
17 convincing evidence that:

18 (i) the proposed out-of-state use of water is not
19 contrary to water conservation in Montana; and

20 (ii) the proposed out-of-state use of water is not
21 otherwise detrimental to the public welfare of the citizens
22 of Montana.

23 (c) In determining whether the applicant has proved by
24 clear and convincing evidence that the requirements of
25 subsections (4)(b)(i) and (4)(b)(ii) are met, the board

1 shall consider the following factors:

2 (i) whether there are present or projected water
3 shortages within the state of Montana;

4 (ii) whether the water that is the subject of the
5 application could feasibly be transported to alleviate water
6 shortages within the state of Montana;

7 (iii) the supply and sources of water available to the
8 applicant in the state where the applicant intends to use
9 the water; and

10 (iv) the demands placed on the applicant's supply in
11 the state where the applicant intends to use the water.

12 (d) When applying for a reservation to withdraw and
13 transport water for use outside the state, the applicant
14 shall submit to and comply with the laws of the state of
15 Montana governing the appropriation, lease, use, and
16 reservation of water.

17 ~~4~~(5) If the purpose of the reservation requires
18 construction of a storage or diversion facility, the
19 applicant shall establish to the satisfaction of the board
20 that there will be progress toward completion of the
21 facility and accomplishment of the purpose with reasonable
22 diligence in accordance with an established plan.

23 ~~5~~(6) The board shall limit any reservations after
24 May 9, 1979, for maintenance of minimum flow, level, or
25 quality of water that it awards at any point on a stream or

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

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

10 ~~(7)~~(8) Any person desiring to use water reserved to a
11 conservation district for agricultural purposes shall make
12 application for such use with the district, and the district
13 upon approval of the application must inform the department
14 of the approved use. The department shall maintain records
15 of all uses of water reserved to conservation districts and
16 be responsible, when requested by the districts, for
17 rendering technical and administrative assistance within the
18 department's staffing and budgeting limitations in the
19 preparation and processing of such applications for the
20 conservation districts. The department shall, within its
21 staffing and budgeting limitations, complete any feasibility
22 study requested by the districts within 12 months of the
23 time the request was made. The board shall extend the time
24 allowed to develop a plan identifying projects for utilizing
25 a district's reservation so long as the conservation

1 district makes a good faith effort, within its staffing and
2 budget limitations, to develop a plan.

3 ~~(8)~~(9) A reservation under this section shall date
4 from the date the order reserving the water is adopted by
5 the board and shall not adversely affect any rights in
6 existence at that time.

7 ~~(9)~~(10) The board shall, periodically but at least once
8 every 10 years, review existing reservations to ensure that
9 the objectives of the reservation are being met. Where the
10 objectives of the reservation are not being met, the board
11 may extend, revoke, or modify the reservation.

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

1 board may not reallocate water reserved under this section
 2 on any stream or river more frequently than once every 5
 3 years.

4 ~~{11}~~(12) Nothing in this section vests the board with
 5 the authority to alter a water right that is not a
 6 reservation.

7 (13) The department shall undertake a program to
 8 educate the public, other state agencies, and political
 9 subdivisions of the state as to the benefits of the
 10 reservation process and the procedures to be followed to
 11 secure the reservation of water. The department shall
 12 provide technical assistance to other state agencies and
 13 political subdivisions in applying for reservations under
 14 this section.

15 (14) Water reserved under this section is not subject
 16 to the state water leasing program established under
 17 [section 14 12]."

18 NEW SECTION. Section 15. Reservations within Missouri
 19 River basin. (1) The state or any agency or political
 20 subdivision thereof or the United States or any agency
 21 thereof that desires to apply for a reservation of water in
 22 the Missouri River basin shall file a claim pursuant to
 23 85-2-316 no later than July 1, 1987.

24 (2) THE SUBJECT TO LEGISLATIVE APPROPRIATION, THE
 25 department shall provide technical and financial assistance

1 to other state agencies and political subdivisions in
 2 applying for reservations within the Missouri River basin.

3 (3) Before December 31, 1989, the board shall make a
 4 final determination in accordance with 85-2-316 on all
 5 applications filed before July 1, 1987, for reservations of
 6 water in the Missouri River basin.

7 (4) Water reservations approved by the board under
 8 this section have a priority date of July 1, 1985. The board
 9 shall by order establish the relative priority of
 10 applications approved under this section.

11 Section 16. Section 85-2-112, MCA, is amended to read:
 12 "85-2-112. Department duties. The department shall:

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

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

23 (3) establish and keep in its Helena office a
 24 centralized record system of all existing rights and a
 25 public record of permits, certificates, claims of existing

1 rights, applications, and other documents filed in its
2 office under this chapter;

3 {4} in cooperation with other state agencies,
4 institutions, colleges, and universities, establish and
5 maintain a centralized and efficient water resources data
6 management system sufficient to make available and readily
7 accessible, in a usable format, to state agencies and other
8 interested persons, information on the state's water
9 resources, out-of-state water resources that affect the
10 state, existing and potential uses, and existing and
11 potential demand. All other state agencies, institutions,
12 and colleges and universities shall cooperate with the
13 department in the development and maintenance of this
14 system.

15 {4}{5} cooperate with, assist, advise, and coordinate
16 plans and activities with the federal, state, and local
17 agencies in matters relating to this chapter;

18 {5}{6} upon request by any person, cooperate with,
19 assist, and advise that person in matters pertaining to
20 measuring water or filing claims of existing rights with a
21 district court under this chapter;

22 {6}{7} adopt rules necessary to reject, modify, or
23 condition permit applications in highly appropriated basins
24 or subbasins as provided in 85-2-319."

25 Section 17. Section 85-1-203, MCA, is amended to read:

1 "85-1-203. State water plan. (1) The department shall
2 gather from any source reliable information relating to
3 Montana's water resources and prepare therefrom a continuing
4 comprehensive inventory of the water resources of the state.
5 In preparing this inventory, the department may conduct
6 studies; adopt studies made by other competent water
7 resource groups, including federal, regional, state, or
8 private agencies; perform research or employ other competent
9 agencies to perform research on a contract basis; and hold
10 public hearings in affected areas at which all interested
11 parties shall be given an opportunity to appear.

12 (2) The department shall formulate and, with the
13 approval of the board, adopt and from time to time amend,
14 extend, or add to a comprehensive, coordinated multiple-use
15 water resources plan known as the "state water plan". The
16 state water plan may be formulated and adopted in sections,
17 these sections corresponding with hydrologic divisions of
18 the state. The state water plan shall set out a progressive
19 program for the conservation, development, and utilization
20 of the state's water resources and propose the most
21 effective means by which these water resources may be
22 applied for the benefit of the people, with due
23 consideration of alternative uses and combinations of uses.
24 Before adoption of the state water plan or any section
25 thereof, the department shall hold public hearings in the

1 state or in an area of the state encompassed by a section
2 thereof if adoption of a section is proposed. Notice of the
3 hearing or hearings shall be published for 2 consecutive
4 weeks in a newspaper of general county circulation in each
5 county encompassed by the proposed plan or section thereof
6 at least 30 days prior to the hearing.

7 (3) The department shall submit to the water policy
8 committee established in [section 21 19] and to each general
9 session of the legislature the state water plan or any
10 section thereof or amendments, additions, or revisions
11 thereto which the department has formulated and adopted.

12 (4) The department shall prepare a continuing
13 inventory of the groundwater resources of the state. The
14 groundwater inventory shall be included in the comprehensive
15 water resources inventory described in subsection (1) above
16 but shall be a separate component thereof.

17 (5) The department shall publish the comprehensive
18 inventory, the state water plan, the groundwater inventory,
19 or any part of each, and the department may assess and
20 collect a reasonable charge for these publications.

21 (6) In developing and revising the state water plan as
22 provided in this section, the department shall consult with
23 the water policy committee established in [section 21 19]
24 and solicit the advice of the committee in carrying out its
25 duties under this section."

1 Section 18. Section 85-1-621, MCA, is amended to read:
2 "85-1-621. Report to the legislature. The department
3 shall prepare a biennial report to the legislature
4 describing the status of the water development program. The
5 report must describe ongoing projects and activities and
6 those which have been completed during the biennium. The
7 report must identify and rank in order of priority the
8 projects for which the department desires to seek
9 congressional authorization and funding and the efforts the
10 department will undertake in attempting to secure such
11 authorization and funding. The report must also describe
12 proposed projects and activities for the coming biennium and
13 recommendations for necessary appropriations. A copy of the
14 report shall be submitted to the president of the senate and
15 the speaker of the house, to the members of the water policy
16 committee established in [section 21 19], and to such other
17 members of the legislature as may request a copy."

18 NEW SECTION. Section 19. Water policy committee.
19 (1) There is a permanent water policy committee of the
20 legislature. The committee consists of eight members. The
21 senate committee on committees and the speaker of the house
22 of representatives shall each appoint four members on a
23 bipartisan basis. The committee shall elect its chairman
24 and vice-chairman. The committee shall meet as often as
25 necessary, including during the interim between sessions, to

1 perform the duties specified within this section.

2 (2) On a continuing basis, the committee shall:

3 (a) advise the legislature on the adequacy of the
4 state's water policy and of important state, regional,
5 national, and international developments which affect
6 Montana's water resources;

7 (b) oversee the policies and activities of the
8 department of natural resources and conservation, other
9 state executive agencies, and other state institutions, as
10 they affect the water resources of the state; and

11 (c) communicate with the public on matters of water
12 policy as well as the water resources of the state.

13 (3) On a regular basis, the committee shall:

14 (a) analyze and comment on the state water plan
15 required by 85-1-203, when filed by the department;

16 (b) analyze and comment on the report of the status of
17 the state's water development program required by 85-1-621,
18 when filed by the department;

19 (c) analyze and comment on water-related research
20 undertaken by any state agency, institution, college, or
21 university;

22 (d) analyze, verify, and comment on the adequacy of
23 and information contained in the water resources data
24 management system maintained by the department under
25 85-2-112; and

1 (e) report to the legislature, not less than once
2 every biennium.

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

8 Section 20. Section 85-2-122, MCA, is amended to read:

9 "85-2-122. Penalties. A person who violates or refuses
10 or neglects to comply with 85-2-301, ~~85-2-402(1)~~, ~~and~~
11 ~~85-2-403(3)~~ the provisions of this chapter, any order of the
12 department, or any rule of the board is guilty of a
13 misdemeanor."

14 NEW SECTION. Section 21. Extension of authority. Any
15 existing authority of the board and the department of
16 natural resources and conservation to make rules on the
17 subject of the provisions of this act is extended to the
18 provisions of this act.

19 Section 22. Section 7, Chapter 706, Laws of 1983, is
20 amended to read:

21 "Section 7. Termination date. ~~This act~~ Section 4 of
22 [this act] terminates July 1, 1985. The other sections do
23 not terminate and are permanent law."

24 NEW SECTION. Section 23. Repealer. Section 85-2-104,
25 MCA, is repealed.

1 NEW SECTION. Section 24. Codification instruction.
2 Sections ~~147--177--and-21~~ 12, 15, AND 19 are intended to be
3 codified as an integral part of Title 85, chapter 2, and the
4 provisions of Title 85, chapter 2, apply to sections ~~147-177~~
5 ~~and-21~~ 12, 15, AND 19.

6 NEW SECTION. Section 25. Severability. If a part of
7 this act is invalid, all valid parts that are severable from
8 the invalid part remain in effect. If a part of this act is
9 invalid in one or more of its applications, the part remains
10 in effect in all valid applications that are severable from
11 the invalid applications.

12 NEW SECTION. Section 26. Applicability. This act
13 applies to all permit applications, change in appropriation
14 right applications, water sales and lease applications, and
15 reservation applications filed and pending with the
16 department on July 1, 1985, but upon which a hearing under
17 Title 85, chapter 2, has not yet commenced.

18 NEW SECTION. Section 27. Effective date. This act is
19 effective July 1, 1985.

-End-

1 HOUSE BILL NO. 680

2 INTRODUCED BY IVERSON, BLAYLOCK, HARP, SHAW,
 3 ASAY, CODY, HOLLIDAY, HARPER, MARKS, NEUMAN,
 4 ABRAMS, D. BROWN, VAN VALKENBURG, KADAS,
 5 VINCENT, DONALDSON, NATHE, BRADLEY,
 6 POFF, TVEIT, E. SMITH, BARDANOUE

7 BY REQUEST OF THE SELECT COMMITTEE ON WATER MARKETING

8
 9 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING STATE WATER
 10 POLICY TO MAXIMIZE MONTANA'S INTERESTS IN THE INTERSTATE
 11 ALLOCATION OF WATER; AMENDING CRITERIA FOR WATER
 12 APPROPRIATION AND CHANGES IN APPROPRIATION; PROVIDING FOR A
 13 LIMITED WATER LEASING PROGRAM; EXEMPTING WATER RESERVATIONS
 14 FROM THE LEASING PROGRAM; PLACING CERTAIN PIPELINES UNDER
 15 THE MONTANA MAJOR FACILITY SITING ACT; PROVIDING FOR WATER
 16 RESERVATIONS IN THE MISSOURI RIVER BASIN; ESTABLISHING A
 17 WATER RESOURCES DATA MANAGEMENT SYSTEM; CREATING A PERMANENT
 18 WATER POLICY COMMITTEE; REPEALING THE BAN ON THE USE OF
 19 WATER FOR COAL SLURRY; AMENDING SECTIONS 75-20-104,
 20 75-20-216, 75-20-218, 75-20-303, 75-20-304, 75-20-1202,
 21 85-1-203 THROUGH 85-1-205, 85-1-621, 85-2-102, 85-2-112,
 22 85-2-122, 85-2-124, 85-2-301, 85-2-311, 85-2-312, 85-2-316,
 23 85-2-402, MCA, AND SECTION 7, CHAPTER 706, LAWS OF 1983;
 24 REPEALING SECTION 85-2-104, MCA; AND PROVIDING AN EFFECTIVE
 25 DATE AND AN APPLICABILITY DATE."

1

2 WHEREAS, the Select Committee on Water Marketing was
 3 commissioned by the 1983 Legislature to undertake a study of
 4 the advantages and disadvantages of water marketing; and

5

6 WHEREAS, the Select Committee in completing its study
 7 determined that Montana needs to address broader questions
 8 of water policy in order to secure Montana's interests in
 9 allocation and management of state waters; and

9

10 WHEREAS, the Select Committee has presented a
 11 comprehensive package of recommendations that must be
 12 considered as a whole; and

12

13 WHEREAS, these recommendations serve to revise
 14 Montana's water policy in order to maximize Montana's
 15 authority over management of state waters and other natural
 16 resources and to conserve water for existing and future
 17 beneficial uses by Montanans.

17

18 THEREFORE, the Legislature of the State of Montana
 19 finds that this legislation and other recommendations of the
 20 Select Committee on Water Marketing constitute an
 21 appropriate revision of state water policy necessary to
 22 secure Montana's interests for present and future benefit to
 23 Montanans.

24

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

25

Section 1. Section 85-2-102, MCA, is amended to read:

THIRD READING

HB 680

-2-



There are no changes in HB 680, and due to length will not be rerun. Please refer to yellow copy for complete text.

STANDING COMMITTEE REPORT

SENATE

MARCH 21 19 85

MARCH 21 19 85

MR. PRESIDENT

We, your committee on NATURAL RESOURCES

having had under consideration HOUSE BILL No. 680

THIRD reading copy (BLUE)
(BLAYLOCK) color

WATER POLICY REVISIONS

Respectfully report as follows. That HOUSE BILL No. 680

be amended as follows:

1. Title, line 20.
Following: "75-20-216,"
Insert: "75-20-202,"
2. Page 8, line 20.
Following: "River"
Insert: "and its tributaries"
3. Page 11, line 19.
Following: "requirements"
Insert: ", including requirements for reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries"
4. Page 20, lines 21 and 22.
Following: "by" on line 21
Strike: "clear and convincing"
Insert: "substantial credible"

5. Page 22, line 7.
Following: "requirements"
Insert: ", including requirements for reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries"

6. Page 26, line 5.
Following: "IN"
Insert: "inside"

7. Page 29, line 4.
Following: "in"
Insert: "inside"

8. Page 33, line 13.
Following: line 12
Insert: "Section 9. Section 75-20-202, MCA, is amended to read:

"75-20-202. Exemptions. (1) A certificate is not required under this chapter for a facility under diligent onsite physical construction or in operation on January 1, 1973.

(2) The board may adopt reasonable rules establishing exemptions from this chapter for the relocation, reconstruction, or upgrading of a facility that:

(a) would otherwise be covered by this chapter; and
(b) (i) is unlikely to have a significant environmental impact by reason of length, size, location, available space or right-of-way, or construction methods; or

(ii) utilizes coal, wood, biomass, grain, wind, or sun as a fuel source and the technology of which will result in greater efficiency, promote energy conservation, and promote greater system reliability than the existing facility.

(3) This chapter does not apply to a facility defined in 75-20-104 (10)(c) that has been designated by the governor for environmental review by an executive agency of the state for the purpose of complying with Title 75, chapter 1, pursuant to Executive Order 4-81 and prior to [the effective date of this act]."

Renumber: subsequent sections

OKKPASS

OKKOKPASSX

Page 1 of 3


SENATOR DOROTHY ECK Chairman.

Page 2 of 3


SENATOR DOROTHY ECK

MARCH 21 19 85

STATEMENT OF INTENT
HOUSE BILL 680
SENATE NATURAL RESOURCES COMMITTEE

9. Page 44, line 15.
Following: "River"
Insert: "and its tributaries"

10. Page 49, line 22.
Following: "file"
Strike: "a claim"
Insert: "an application"

Mr. President,

We, your committee on Natural Resources having had under consideration House Bill 680, attach the following statement of intent:

A statement of intent is needed for House Bill 680 because section 21 extends the authority of the board and the department of natural resources and conservation to adopt rules relating to the provisions of the bill. Such extension of authority would include the authority to adopt rules relating to the implementation of water reservations on the Missouri River basin under section 15 and relating to the leasing of water under section 12.

In their implementation of this bill, the long-range goal of the board and the department must be to conserve and protect the water resources of Montana for the use of all Montanans. Since agricultural uses of water constitute the largest uses by far, and a healthy economy of the state depends upon agriculture, the agricultural uses of water in Montana must be particularly conserved and protected.

In developing rules implementing this bill, and in entering into lease agreements with potential water users under section 12, it is the intent of the legislature that the department establish leasing rates which are commercially reasonable and take into account the financial abilities of a particular sector of the economy to lease water at various rates. Accordingly, it is

163
AND, AS AMENDED
BE CONCURRED IN

STATEMENT OF INTENT
ADOPTED AND ATTACHED
Page 3 of 3


.....
SENATOR DOROTHY ECK Chairman.

Statement of Intent
House Bill 680
Page 2

contemplated that leasing rates for agricultural uses of water will be considerably lower than rates for industrial uses, as an example.

It is also the intent of the legislature that water be made available through the leasing program at minimal cost to potential users who may wish to benefit from a water use project of a third party. An example would be an irrigation district or a municipality in Montana that may desire to tap into a pipeline conveying water out-of-state. Provision for such incidental beneficial uses is authorized under section 12(8) of the bill.

In entering into a lease of water, the department shall include a provision in the lease that other existing or planned uses of water in Montana will be fully protected during a low water year. All of the criteria listed in 85-2-311 must be applied and considered by the department before it decides to enter into a lease of water.

In the implementation of water reservations in the Missouri River basin, it is the intent of the legislature that applicants for agricultural reservations be given equal treatment and opportunity to reserve water as that afforded applicants for instream uses. To the extent possible, equal treatment and opportunity includes the provision of financial resources and technical assistance to such applicants.

If an application for a slurry pipeline is received by the department of natural resources and conservation under the

Statement of Intent
House Bill 680
Page 3

Montana Major Facility Siting Act, it is the intent of the legislature that the department and board of natural resources and conservation shall consider and document the potential adverse economic impacts, if any, on railroads and railroad employment as required by 75-20-301(3) and 75-20-503. The board shall also, to the extent feasible, require mitigation of these adverse impacts.

13

COMMITTEE OF THE WHOLE AMENDMENT

SENATE

Mar 26, 1985

DATE

1:25

TIME

MR. CHAIRMAN: I MOVE TO AMEND HOUSE BILL

No. 680

third reading copy (blue) as follows:
Color

1. Page 6, line 1.
Following: "department"
Insert: ", with the approval of the board,"
2. Page 22, line 3.
Strike: "a public hearing"
Insert: "one or more public hearings"
3. Page 22, line 18.
Following: "after"
Strike: "a public hearing"
Insert: "one or more public hearings"
4. Page 24, line 2.
Following: "hold"
Strike: "a hearing"
Insert: "one or more hearings"
5. Page 24, lines 4 and 5.
Following: "hold" on line 4
Strike: "a hearing"
Insert: "one or more hearings"
6. Page 40, line 3.
Following: "Montana."
Insert: "Water leases issued under this program must be approved by the board."

PC3HB680.651

ADOPT

REJECT


HALLIGAN

STATEMENT OF INTENT

HOUSE BILL 680

Senate Natural Resources Committee

1 A statement of intent is needed for House Bill 680
 2 because section 21 extends the authority of the board and
 3 the department of natural resources and conservation to
 4 adopt rules relating to the provisions of the bill. Such
 5 extension of authority would include the authority to adopt
 6 rules relating to the implementation of water reservations
 7 on the Missouri River basin under section 15 and relating to
 8 the leasing of water under section 12.

9 In their implementation of this bill, the long-range
 10 goal of the board and the department must be to conserve and
 11 protect the water resources of Montana for the use of all
 12 Montanans. Since agricultural uses of water constitute the
 13 largest uses by far, and a healthy economy of the state
 14 depends upon agriculture, the agricultural uses of water in
 15 Montana must be particularly conserved and protected.

16 In developing rules implementing this bill, and in
 17 entering into lease agreements with potential water users
 18 under section 12, it is the intent of the legislature that
 19 the department establish leasing rates which are
 20 commercially reasonable and take into account the financial
 21 abilities of a particular sector of the economy to lease

1 water at various rates. Accordingly, it is contemplated
 2 that leasing rates for agricultural uses of water will be
 3 considerably lower than rates for industrial uses, as an
 4 example.

5 It is also the intent of the legislature that water be
 6 made available through the leasing program at minimal cost
 7 to potential users who may wish to benefit from a water use
 8 project of a third party. An example would be an irrigation
 9 district or a municipality in Montana that may desire to tap
 10 into a pipeline conveying water out of state. Provision for
 11 such incidental beneficial uses is authorized under section
 12 12(8) of the bill.

13 In entering into a lease of water, the department shall
 14 include a provision in the lease that other existing or
 15 planned uses of water in Montana will be fully protected
 16 during a low-water year. All of the criteria listed in
 17 85-2-311 must be applied and considered by the department
 18 before it decides to enter into a lease of water.

19 In the implementation of water reservations in the
 20 Missouri River basin, it is the intent of the legislature
 21 that applicants for agricultural reservations be given equal
 22 treatment and opportunity to reserve water as that afforded
 23 applicants for instream uses. To the extent possible, equal
 24 treatment and opportunity includes the provision of
 25 financial resources and technical assistance to such



1 applicants.

2 If an application for a slurry pipeline is received by
3 the department of natural resources and conservation under
4 the Montana Major Facility Siting Act, it is the intent of
5 the legislature that the department and board of natural
6 resources and conservation shall consider and document the
7 potential adverse economic impacts, if any, on railroads and
8 railroad employment as required by 75-20-301(3) and
9 75-20-503. The board shall also, to the extent feasible,
10 require mitigation of these adverse impacts.

HOUSE BILL NO. 680

INTRODUCED BY IVERSON, BLAYLOCK, HARP, SHAW,
ASAY, CODY, HOLLIDAY, HARPER, MARKS, NEUMAN,
ABRAMS, D. BROWN, VAN VALKENBURG, KADAS,
VINCENT, DONALDSON, NATHE, BRADLEY,
POFF, TVEIT, E. SMITH, BARDANOUE

BY REQUEST OF THE SELECT COMMITTEE ON WATER MARKETING

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING STATE WATER
POLICY TO MAXIMIZE MONTANA'S INTERESTS IN THE INTERSTATE
ALLOCATION OF WATER; AMENDING CRITERIA FOR WATER
APPROPRIATION AND CHANGES IN APPROPRIATION; PROVIDING FOR A
LIMITED WATER LEASING PROGRAM; EXEMPTING WATER RESERVATIONS
FROM THE LEASING PROGRAM; PLACING CERTAIN PIPELINES UNDER
THE MONTANA MAJOR FACILITY SITING ACT; PROVIDING FOR WATER
RESERVATIONS IN THE MISSOURI RIVER BASIN; ESTABLISHING A
WATER RESOURCES DATA MANAGEMENT SYSTEM; CREATING A PERMANENT
WATER POLICY COMMITTEE; REPEALING THE BAN ON THE USE OF
WATER FOR COAL SLURRY; AMENDING SECTIONS 75-20-104,
75-20-216, 75-20-202, 75-20-218, 75-20-303, 75-20-304,
75-20-1202, 85-1-203 THROUGH 85-1-205, 85-1-621, 85-2-102,
85-2-112, 85-2-122, 85-2-124, 85-2-301, 85-2-311, 85-2-312,
85-2-316, 85-2-402, MCA, AND SECTION 7, CHAPTER 706, LAWS OF
1983; REPEALING SECTION 85-2-104, MCA; AND PROVIDING AN
EFFECTIVE DATE AND AN APPLICABILITY DATE."

WHEREAS, the Select Committee on Water Marketing was
commissioned by the 1983 Legislature to undertake a study of
the advantages and disadvantages of water marketing; and

WHEREAS, the Select Committee in completing its study
determined that Montana needs to address broader questions
of water policy in order to secure Montana's interests in
allocation and management of state waters; and

WHEREAS, the Select Committee has presented a
comprehensive package of recommendations that must be
considered as a whole; and

WHEREAS, these recommendations serve to revise
Montana's water policy in order to maximize Montana's
authority over management of state waters and other natural
resources and to conserve water for existing and future
beneficial uses by Montanans.

THEREFORE, the Legislature of the State of Montana
finds that this legislation and other recommendations of the
Select Committee on Water Marketing constitute an
appropriate revision of state water policy necessary to
secure Montana's interests for present and future benefit to
Montanans.

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

Section 1. Section 85-2-102, MCA, is amended to read:



1 "85-2-102. Definitions. Unless the context requires
2 otherwise, in this chapter the following definitions apply:

3 (1) "Appropriate" means to divert, impound, or
4 withdraw (including by stock for stock water) a quantity of
5 water or, in the case of a public agency, to reserve water
6 in accordance with 85-2-316.

7 (2) "Beneficial use", unless otherwise provided,
8 means:

9 (a) a use of water for the benefit of the
10 appropriator, other persons, or the public, including but
11 not limited to agricultural (including stock water),
12 domestic, fish and wildlife, industrial, irrigation, mining,
13 municipal, power, and recreational uses; and

14 (b) a use of water appropriated by the department for
15 the state water leasing program under [section 14 12 13] and
16 of water leased under a valid lease issued by the department
17 under [section 14 12 13].

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

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

22 (5) "Change in appropriation right" means a change in
23 the place of diversion, the place of use, the purpose of
24 use, or the place of storage.

25 ~~†5†~~(6) "Declaration" means the declaration of an

1 existing right filed with the department under section 8,
2 Chapter 452, Laws of 1973.

3 ~~†6†~~(7) "Department" means the department of natural
4 resources and conservation provided for in Title 2, chapter
5 15, part 33.

6 ~~†7†~~(8) "Existing right" means a right to the use of
7 water which would be protected under the law as it existed
8 prior to July 1, 1973.

9 ~~†8†~~(9) "Groundwater" means any water beneath the land
10 surface or beneath the bed of a stream, lake, reservoir, or
11 other body of surface water, and which is not a part of that
12 surface water.

13 ~~†9†~~(10) "Permit" means the permit to appropriate issued
14 by the department under 85-2-301 through 85-2-303 and
15 85-2-306 through 85-2-314.

16 ~~†10†~~(11) "Person" means an individual, association,
17 partnership, corporation, state agency, political
18 subdivision, the United States or any agency thereof, or any
19 other entity.

20 ~~†11†~~(12) "Political subdivision" means any county,
21 incorporated city or town, public corporation, or district
22 created pursuant to state law or other public body of the
23 state empowered to appropriate water but not a private
24 corporation, association, or group.

25 ~~†12†~~"Slurry"--means--a--mixture--of--water--and--insoluble

1 material-

2 (13) "Waste" means the unreasonable loss of water
3 through the design or negligent operation of an
4 appropriation or water distribution facility or the
5 application of water to anything but a beneficial use.

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

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

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

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

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

20 Section 2. Section 85-1-204, MCA, is amended to read:

21 "85-1-204. Department powers over state waters. (1)
22 The department, with the approval of the board, may sell,
23 lease, and otherwise dispose of all waters which may be
24 impounded under this chapter, and the water may be sold for
25 the purpose of irrigation, development of power, watering of

1 stock, or any other purpose. The department, WITH THE
2 APPROVAL OF THE BOARD, may also lease water under the state
3 water leasing program established under the provisions of
4 [section 14 12 13]. To the extent that it may be necessary
5 to carry out this chapter and subject to a compliance with
6 the other provisions of this chapter, the department has
7 full control of all the water of the state not under the
8 exclusive control of the United States and not vested in
9 private ownership, and it shall take such steps as may be
10 necessary to appropriate and conserve the same for the use
11 of the people. The authority of the department conferred by
12 this chapter extends and applies to rights to the natural
13 flow of the waters of this state which it may acquire, with
14 the approval of the board, by condemnation, purchase,
15 exchange, appropriation, or agreement.

16 (2) For the purpose of regulating the diversion of
17 those waters, the department may enter upon the means and
18 place of use of all appropriators for making surveys of
19 respective rights and seasonal needs.

20 (3) The department may take into consideration the
21 decrees of the courts of this state having jurisdiction
22 which purport to adjudicate the waters of a stream or its
23 tributaries, and a fair, reasonable, and equitable
24 reconciliation shall be made between the claimants asserting
25 rights under different decrees and between decreed rights

1 and asserted rights of appropriation not adjudicated by any
2 court.

3 (4) The department, at its discretion, may hold
4 hearings relating to the rights of respective claimants
5 after first giving such notice as it considers appropriate
6 and make findings of the date and quantity of appropriation
7 and use of all claimants which the department will recognize
8 and observe in diverting the waters which it owns. The
9 department may police and distribute to the owner of the
10 recognized appropriation the waters due him upon request and
11 under terms agreed upon.

12 (5) The department, when engaged in controlling and
13 dividing the natural flow of a stream under the authority
14 granted by this chapter, is exercising a police power of the
15 state, and water commissioners appointed by any court may
16 not deprive the department of any of the waters owned or
17 administered under agreement with respective owners. The
18 owner of a prior right contending that the department is not
19 recognizing and respecting the appropriation may resort to a
20 court for the purpose of determining whether or not the
21 rights of the claimant have been invaded, and the department
22 shall observe the terms of the final decree.

23 (6) When the department impounds or acquires the right
24 of appropriation of the waters of a stream it may divert or
25 authorize the diversion at any point on the stream or any

1 portion thereof when it is done without injury to a prior
2 appropriator."

3 Section 3. Section 85-2-301, MCA, is amended to read:
4 "85-2-301. Right to appropriate. (1) After July 1,
5 1973, a person may not appropriate water except as provided
6 in this chapter. A person may only appropriate water for a
7 beneficial use.

8 (2) (a) Only the department may appropriate water by
9 permit under-85-2-311 in either of the following instances:

10 (i) for transport outside the following river basins:

11 (A) the Clark Fork River and its tributaries to its
12 confluence with Lake Pend Oreille in Idaho;

13 (B) the Kootenai River and its tributaries to its
14 confluence with Kootenay Lake in British Columbia;

15 (C) the St. Mary River and its tributaries to its
16 confluence with the Oldman River in Alberta;

17 (D) the Little Missouri River and its tributaries to
18 its confluence with Lake Sakakawea in North Dakota; or

19 (E) the Missouri River and its tributaries to its
20 confluence with the Yellowstone River in North Dakota; and

21 (F) the Yellowstone River AND ITS TRIBUTARIES to its
22 confluence with the Missouri River in North Dakota; or

23 (ii) whenever water in excess of 4,000 acre-feet a year
24 and 5.5 cubic feet per second, for any use, is to be
25 consumed.

1 (b) Water for these purposes or in these amounts may
 2 be leased from the department by any person under the
 3 provisions of [section 14 12 13].

4 (3) A right to appropriate water may not be acquired
 5 by any other method, including by adverse use, adverse
 6 possession, prescription, or estoppel. The method prescribed
 7 by this chapter is exclusive."

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

9 "85-2-311. Criteria for issuance of permit. (1) Except
 10 as provided in subsections (2) ~~and (3)~~ through (4), the
 11 department shall issue a permit if the applicant proves by
 12 substantial credible evidence that the following criteria
 13 are met:

14 (a) there are unappropriated waters in the source of
 15 supply:

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

18 (ii) in the amount the applicant seeks to appropriate;
 19 and

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

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

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

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

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

5 (2) ~~(a)~~ The department may not issue a permit for an
 6 appropriation of ~~10,000~~ 4,000 or more acre-feet of water a
 7 year or ~~15~~ and 5.5 or more cubic feet per second of water
 8 unless ~~it affirmatively finds~~ the applicant proves by clear
 9 and convincing evidence that:

10 ~~(i)~~ (a) the criteria in subsection (1) are met;

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

14 ~~(iii)~~ (c) the proposed appropriation is a reasonable
 15 use. Such a finding shall be based on a consideration of the
 16 following:

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

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

23 ~~(C)~~ ~~the economic feasibility of the project;~~

24 ~~(D)~~ (iii) the effects on the quantity, and quality, ~~and~~
 25 ~~potability~~ of water for existing beneficial uses in the

1 source of supply;
 2 (iv) the availability and feasibility of using
 3 low-quality water for the purpose for which application has
 4 been made;

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

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

11 ~~{b}--A-permit-for-an-appropriation-for-a-diversion--for~~
 12 ~~a--consumptive--use--of--10,000-or-more-acre-feet-of-water-a~~
 13 ~~year-or-15-or-more-cubic-feet-per-second-of-water-under-this~~
 14 ~~subsection-may-not-be-issued-unless-the-department-petitions~~
 15 ~~the-legislature-and-the-legislature-affirms-the-findings--of~~
 16 ~~the-department.~~

17 (3) (a) The state of Montana has long recognized the
 18 importance of conserving its public waters and the necessity
 19 to maintain adequate water supplies for the state's water
 20 requirements, INCLUDING REQUIREMENTS FOR RESERVED WATER
 21 RIGHTS HELD BY THE UNITED STATES FOR FEDERAL RESERVED LANDS
 22 AND IN TRUST FOR THE VARIOUS INDIAN TRIBES WITHIN THE
 23 STATE'S BOUNDARIES. Although the state of Montana also
 24 recognizes that, under appropriate conditions, the
 25 out-of-state transportation and use of its public waters are

1 not in conflict with the public welfare of its citizens or
 2 the conservation of its waters, the criteria in this
 3 subsection (3) must be met before out-of-state use may
 4 occur.

5 (b) The department may not issue a permit for the
 6 appropriation of water for withdrawal and transportation for
 7 use outside the state unless the applicant proves by clear
 8 and convincing evidence that:

9 (i) depending on the volume of water diverted or
 10 consumed, the applicable criteria and procedures of
 11 subsection (1) or (2) are met;

12 (ii) the proposed out-of-state use of water is not
 13 contrary to water conservation in Montana; and

14 (iii) the proposed out-of-state use of water is not
 15 otherwise detrimental to the public welfare of the citizens
 16 of Montana.

17 (c) In determining whether the applicant has proved by
 18 clear and convincing evidence that the requirements of
 19 subsections (3)(b)(ii) and (3)(b)(iii) are met, the
 20 department shall consider the following factors:

21 (i) whether there are present or projected water
 22 shortages within the state of Montana;

23 (ii) whether the water that is the subject of the
 24 application could feasibly be transported to alleviate water
 25 shortages within the state of Montana;

1 (iii) the supply and sources of water available to the
2 applicant in the state where the applicant intends to use
3 the water; and

4 (iv) the demands placed on the applicant's supply in
5 the state where the applicant intends to use the water.

6 (d) When applying for a permit or a lease to withdraw
7 and transport water for use outside the state, the applicant
8 shall submit to and comply with the laws of the state of
9 Montana governing the appropriation, lease, and use of
10 water.

11 ~~(3)~~(4) An appropriation, diversion, impoundment, use,
12 restraint, or attempted appropriation, diversion,
13 impoundment, use, or restraint contrary to the provisions of
14 this section is ~~null and void~~ invalid. No officer, agent,
15 agency, or employee of the state may knowingly permit, aid,
16 or assist in any manner such unauthorized appropriation,
17 diversion, impoundment, use, or other restraint. No person
18 or corporation may, directly or indirectly, personally or
19 through an agent, officer, or employee, attempt to
20 appropriate, divert, impound, use, or otherwise restrain or
21 control waters within the boundaries of this state except
22 in accordance with this section."

23 Section 5. Section 85-2-312, MCA, is amended to read:

24 "85-2-312. Terms of permit. (1) The department may
25 issue a permit for less than the amount of water requested,

1 but in no case may it issue a permit for more water than is
2 requested or than can be beneficially used without waste for
3 the purpose stated in the application. The department may
4 require modification of plans and specifications for the
5 appropriation or related diversion or construction. ~~It~~ Based
6 ~~upon the criteria listed in 85-2-311, the~~ THE department may
7 issue a permit subject to terms, conditions, restrictions,
8 and limitations it considers necessary ~~to protect the rights~~
9 ~~of other appropriators~~ TO SATISFY THE CRITERIA LISTED IN
10 85-2-311, and it may issue temporary or seasonal permits. A
11 permit shall be issued subject to existing rights and any
12 final determination of those rights made under this chapter.

13 (2) The department may limit the time for commencement
14 of the appropriation works, completion of construction, and
15 actual application of the water to the proposed beneficial
16 use. In fixing those time limits, the department shall
17 consider the cost and magnitude of the project, the
18 engineering and physical features to be encountered, and, on
19 projects designed for gradual development and gradually
20 increased use of water, the time reasonably necessary for
21 that gradual development and increased use. For good cause
22 shown by the permittee, the department may in its discretion
23 reasonably extend time limits.

24 (3) The original of the permit shall be sent to the
25 permittee, and a copy shall be kept in the office of the

1 department in Helena.

2 (4) 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 water right permits, certificates, and
6 change approvals issued by the department within the
7 county."

8 Section 6. Section 85-2-124, MCA, is amended to read:

9 "85-2-124. Fees for environmental impact statements.

10 (1) Whenever the department determines that the filing of an
11 application (or a combination of applications) for a permit
12 or approval under this chapter requires the preparation of
13 an environmental impact statement as prescribed by the
14 Montana Environmental Policy Act and the application (or
15 combination of applications) involves the use of ~~107000~~
16 4,000 or more acre-feet per year ~~or 15~~ and 5.5 or more cubic
17 feet per second of water, the applicant shall pay to the
18 department the fee prescribed in this section. The
19 department shall notify the applicant in writing within 90
20 days of receipt of a correct and complete application (or a
21 combination of applications) if it determines that an
22 environmental impact statement and fee is required.

23 (2) Upon notification by the department under
24 subsection (1), the applicant shall pay a fee based upon the
25 estimated cost of constructing, repairing, or changing the

1 appropriation and diversion facilities as herein provided.
2 The maximum fee that shall be paid to the department may not
3 exceed the fees set forth in the following declining scale:
4 2% of the estimated cost up to \$1 million; plus 1% of the
5 estimated cost over \$1 million and up to \$20 million; plus
6 1/2 of 1% of the estimated cost over \$20 million and up to
7 \$100 million; plus 1/4 of 1% of the estimated cost over \$100
8 million and up to \$300 million; plus 1/8 of 1% of the
9 estimated cost over \$300 million. The fee shall be
10 deposited in the state special revenue fund to be used by
11 the department only to comply with the Montana Environmental
12 Policy Act in connection with the application(s). Any
13 amounts paid by the applicant but not actually expended by
14 the department shall be refunded to the applicant.

15 (3) The department and the applicant may determine by
16 agreement the estimated cost of any facility for purposes of
17 computing the amount of the fee to be paid to the department
18 by the applicant. The department may contract with an
19 applicant for:

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

24 (b) the division of responsibility between the
25 department and an applicant for supervision over, control

1 of, and payment for the development of information by the
 2 applicant or a third party on behalf of the department and
 3 the applicant under any such contract or contracts;

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

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

12 (5) No fee as prescribed by this section may be
 13 assessed against an applicant for a permit or approval if
 14 the applicant has also filed an application for a
 15 certificate of environmental compatibility or public need
 16 pursuant to the Montana Major Facility Siting Act and the
 17 appropriation or use of water involved in the application(s)
 18 for permit or approval has been or will be studied by the
 19 department pursuant to that act.

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

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

1 section shall void the application(s).

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

7 Section 7. Section 85-2-402, MCA, is amended to read:

8 "85-2-402. Changes in appropriation rights. ~~{1}~~--An
 9 appropriator may not change the place of diversion, place of
 10 use, purpose of use, or place of storage except as permitted
 11 under this section and approved by the department;

12 ~~{2}~~--The department shall approve the proposed change
 13 if it determines that the proposed change will not adversely
 14 affect the rights of other persons; if the department
 15 determines that the proposed change might adversely affect
 16 the rights of other persons, notice of the proposed change
 17 shall be given in accordance with 85-2-308. If the
 18 department determines that an objection filed by a person
 19 whose rights may be affected states a valid objection to the
 20 proposed change, the department shall hold a hearing thereon
 21 prior to its approval or denial of the proposed change.
 22 Objections shall meet the requirements of 85-2-308~~{2}~~; and
 23 hearings shall be held in accordance with 85-2-309.

24 ~~{3}~~--An appropriator of more than 15 cubic feet per
 25 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. (1) An appropriator may not
9 make a change in an appropriation right except as permitted
10 under this section and with the approval of the department
11 or, if applicable, of the legislature.

12 (2) Except as provided in subsections (3) through (5),
13 the department shall approve a change in appropriation right
14 if the appropriator proves by substantial credible evidence
15 that the following criteria are met:

16 (a) The proposed use will not adversely affect the
17 water rights of other persons or other planned uses or
18 developments for which a permit has been issued or for which
19 water has been reserved.

20 (b) The proposed means of diversion, construction, and
21 operation of the appropriation works are adequate.

22 (c) The proposed use of water is a beneficial use.

23 (3) The department may not approve a change in purpose
24 of use or place of use of an appropriation of 4,000 or more
25 acre-feet of water a year and 5.5 or more cubic feet per

1 second of water unless the appropriator proves by clear--and
 2 convincing SUBSTANTIAL CREDIBLE evidence that:

- 3 (a) the criteria in subsection (2) are met;
 4 (b) the proposed change is a reasonable use. A
 5 finding of reasonable use must be based on a consideration
 6 of:
 7 (i) the existing demands on the state water supply, as
 8 well as projected demands of water for future beneficial
 9 purposes, including municipal water supplies, irrigation
 10 systems, and minimum streamflows for the protection of
 11 existing water rights and aquatic life;
 12 (ii) the benefits to the applicant and the state;
 13 (iii) the effects on the quantity and quality of water
 14 for existing uses in the source of supply;
 15 (iv) the availability and feasibility of using
 16 low-quality water for the purpose for which application has
 17 been made;
 18 (v) the effects on private property rights by any
 19 creation of or contribution to saline seep; and
 20 (vi) the probable significant adverse environmental
 21 impacts of the proposed use of water as determined by the
 22 department pursuant to Title 75, chapter 1, or Title 75,
 23 chapter 20.
 24 (4) The department may not approve a change in purpose
 25 of use or place of use for a diversion that results in 4,000

1 or more acre-feet of water a year and 5.5 or more cubic feet
 2 per second of water being consumed unless:

- 3 (a) the applicant proves by clear and convincing
 4 evidence and the department finds that the criteria in
 5 subsections (2) and (3) are met; and
 6 (b) the department then petitions the legislature and
 7 the legislature affirms the decision of the department after
 8 a-public-hearing ONE OR MORE PUBLIC HEARINGS.
 9 (5) (a) The state of Montana has long recognized the
 10 importance of conserving its public waters and the necessity
 11 to maintain adequate water supplies for the state's water
 12 requirements, INCLUDING REQUIREMENTS FOR RESERVED WATER
 13 RIGHTS HELD BY THE UNITED STATES FOR FEDERAL RESERVED LANDS
 14 AND IN TRUST FOR THE VARIOUS INDIAN TRIBES WITHIN THE
 15 STATE'S BOUNDARIES. Although the state of Montana also
 16 recognizes that, under appropriate conditions, the
 17 out-of-state transportation and use of its public waters are
 18 not in conflict with the public welfare of its citizens or
 19 the conservation of its waters, the following criteria must
 20 be met before out-of-state use may occur:
 21 (b) The department and, if applicable, the legislature
 22 may not approve a change in appropriation right for the
 23 withdrawal and transportation of appropriated water for use
 24 outside the state unless the appropriator proves by clear
 25 and convincing evidence and, if applicable, the legislature

1 approves after a-public-hearing ONE OR MORE PUBLIC HEARINGS
2 that:

3 (i) depending on the volume of water diverted or
4 consumed, the applicable criteria and procedures of
5 subsection (2) or (3) are met;

6 (ii) the proposed out-of-state use of water is not
7 contrary to water conservation in Montana; and

8 (iii) the proposed out-of-state use of water is not
9 otherwise detrimental to the public welfare of the citizens
10 of Montana.

11 (c) In determining whether the appropriator has proved
12 by clear and convincing evidence that the requirements of
13 subsections (5)(b)(ii) and (5)(b)(iii) will be met, the
14 department and, if applicable, the legislature shall
15 consider the following factors:

16 (i) whether there are present or projected water
17 shortages within the state of Montana;

18 (ii) whether the water that is the subject of the
19 proposed change in appropriation might feasibly be
20 transported to alleviate water shortages within the state of
21 Montana;

22 (iii) the supply and sources of water available to the
23 applicant in the state where the applicant intends to use
24 the water; and

25 (iv) the demands placed on the applicant's supply in

1 the state where the applicant intends to use the water.

2 (d) When applying for a change in appropriation right
3 to withdraw and transport water for use outside the state,
4 the applicant shall submit to and comply with the laws of
5 the state of Montana governing the appropriation and use of
6 water.

7 (6) For any application for a change in appropriation
8 right involving 4,000 or more acre-feet of water a year and
9 5.5 or more cubic feet per second of water, the department
10 shall give notice of the proposed change in accordance with
11 85-2-307 and shall hold a-hearing ONE OR MORE HEARINGS in
12 accordance with 85-2-309 prior to its approval or denial of
13 the proposed change. The department shall provide notice
14 and may hold a-hearing ONE OR MORE HEARINGS upon any other
15 proposed change if it determines that such a change might
16 adversely affect the rights of other persons.

17 (7) The department or the legislature, if applicable,
18 may approve a change subject to such terms, conditions,
19 restrictions, and limitations as it considers necessary to
20 ~~protect-the-rights-of-other-persons-and~~ satisfy the criteria
21 of this section, including limitations on the time for
22 completion of the change.

23 (8) If a change is not completed as approved by the
24 department or legislature or if the terms, conditions,
25 restrictions, and limitations of the change approval are not

1 complied with, the department may, after notice and
 2 opportunity for hearing, require the appropriator to show
 3 cause why the change approval should not be modified or
 4 revoked. If the appropriator fails to show sufficient
 5 cause, the department may modify or revoke the change
 6 approval.

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

10 ~~(8)~~(10) A person holding an issued permit or change
 11 approval that has not been perfected may change the place of
 12 diversion, place of use, purpose of use, or place of storage
 13 by filing an application for change pursuant to this
 14 section.

15 (11) A change in appropriation right contrary to the
 16 provisions of this section is invalid. No officer, agent,
 17 agency, or employee of the state may knowingly permit, aid,
 18 or assist in any manner such unauthorized change in
 19 appropriation right. No person or corporation may, directly
 20 or indirectly, personally or through an agent, officer, or
 21 employee, attempt to change an appropriation right except in
 22 accordance with this section."

23 Section 8. Section 75-20-104, MCA, is amended to read:

24 "75-20-104. Definitions. In this chapter, unless the
 25 context requires otherwise, the following definitions apply:

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

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

7 (3) "Associated facilities" includes but is not
 8 limited to transportation links of any kind, aqueducts,
 9 diversion dams, PIPELINES, transmission substations, storage
 10 ponds, reservoirs, and any other device or equipment
 11 associated with the production or delivery of the energy
 12 form or product produced by a facility, except that the term
 13 does not include a facility OR A NATURAL GAS OR CRUDE OIL
 14 GATHERING LINE 17 INCHES OR LESS IN INSIDE DIAMETER.

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

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

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

23 (7) "Commence to construct" means:

24 (a) any clearing of land, excavation, construction, or
 25 other action that would affect the environment of the site

1 or route of a facility but does not mean changes needed for
2 temporary use of sites or routes for nonutility purposes or
3 uses in securing geological data, including necessary
4 borings to ascertain foundation conditions;

5 (b) the fracturing of underground formations by any
6 means if such activity is related to the possible future
7 development of a gasification facility or a facility
8 employing geothermal resources but does not include the
9 gathering of geological data by boring of test holes or
10 other underground exploration, investigation, or
11 experimentation;

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

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

20 (8) "Department" means the department of natural
21 resources and conservation provided for in Title 2, chapter
22 15, part 33.

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

1 (10) "Facility" means:

2 (a) except for crude oil and natural gas refineries,
3 ~~and facilities and associated facilities designed for or~~
4 ~~capable of producing, gathering, processing, transmitting,~~
5 ~~transporting, or distributing crude oil or natural gas,~~ and
6 those facilities subject to The Montana Strip and
7 Underground Mine Reclamation Act, each plant, unit, or other
8 facility and associated facilities designed for or capable
9 of:

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

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

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

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

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

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

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

12 {d}{C} each pipeline, WHETHER PARTIALLY OR WHOLLY
 13 WITHIN THE STATE, greater than 17 inches in INSIDE diameter
 14 and 30 miles in length, and associated facilities;

15 {d}{e}{D} any use of geothermal resources, including
 16 the use of underground space in existence or to be created,
 17 for the creation, use, or conversion of energy; designed for
 18 or capable of producing geothermally derived power
 19 equivalent to 25 million Btu per hour or more or any
 20 addition thereto having an estimated cost in excess of
 21 \$750,000;

22 {e}{f}{E} any underground in situ gasification of
 23 coal.

24 (11) "Person" means any individual, group, firm,
 25 partnership, corporation, cooperative, association,

1 government subdivision, government agency, local government,
 2 or other organization or entity.

3 (12) "Transmission substation" means any structure,
 4 device, or equipment assemblage, commonly located and
 5 designed for voltage regulation, circuit protection, or
 6 switching necessary for the construction or operation of a
 7 proposed transmission line.

8 (13) "Utility" means any person engaged in any aspect
 9 of the production, storage, sale, delivery, or furnishing of
 10 heat, electricity, gas, hydrocarbon products, or energy in
 11 any form for ultimate public use."

12 ~~Section-9r--Section-75-20-216,--MCA,--is-amended-to-read:~~

13 ~~"75-20-216--Study,--evaluation,--and-report-on-proposed~~
 14 ~~facility----assistance-by-other-agencies;--(1)-After-receipt~~
 15 ~~of-an-application,--the-department-and-department--of--health~~
 16 ~~shall--within--90-days-notify-the-applicant-in-writing-that-~~
 17 ~~{a)--the-application-is-in-compliance-and--is--accepted~~
 18 ~~as-complete;--or~~

19 ~~{b)--the--application-is-not-in-compliance-and-list-the~~
 20 ~~deficiencies--therein;--and--upon--correction--of--these~~
 21 ~~deficiencies--and--resubmission--by--the--applicant,--the~~
 22 ~~department-and-department-of-health--shall--within--90--days~~
 23 ~~notify--the--applicant-in-writing-that-the-application-is-in~~
 24 ~~compliance-and-is-accepted-as-complete;~~

25 ~~{2)--Upon-receipt--of--an--application--complying--with~~

1 75-20-211 through 75-20-215, and this section, the
 2 department shall commence an intensive study and evaluation
 3 of the proposed facility and its effects, considering all
 4 applicable criteria listed in 75-20-301 and 75-20-503 and
 5 the department of health shall commence a study to enable it
 6 or the board of health to issue a decision, opinion, order,
 7 certification, or permit as provided in subsection (3). The
 8 department and department of health shall use, to the extent
 9 they consider applicable, valid and useful existing studies
 10 and reports submitted by the applicant or compiled by a
 11 state or federal agency.

12 (3) The department of health shall within 1 year
 13 following the date of acceptance of an application and the
 14 board of health or department of health, if applicable,
 15 within an additional 6 months issue any decision, opinion,
 16 order, certification, or permit required under the laws
 17 administered by the department of health or the board of
 18 health and this chapter. The department of health and the
 19 board of health shall determine compliance with all
 20 standards, permit requirements, and implementation plans
 21 under their jurisdiction for the primary and reasonable
 22 alternate locations in their decision, opinion, order,
 23 certification, or permit. The decision, opinion, order,
 24 certification, or permit, with or without conditions, is
 25 conclusive on all matters that the department of health and

1 board of health administer, and any of the criteria
 2 specified in subsections (2) through (7) of 75-20-503 that
 3 are a part of the determinations made under the laws
 4 administered by the department of health and the board of
 5 health. Although the decision, opinion, order,
 6 certification, or permit issued under this subsection is
 7 conclusive, the board retains authority to make the
 8 determination required under 75-20-301(2)(c). The decision,
 9 opinion, order, certification, or permit of the department
 10 of health or the board of health satisfies the review
 11 requirements by those agencies and shall be acceptable in
 12 lieu of an environmental impact statement under the Montana
 13 Environmental Policy Act. A copy of the decision, opinion,
 14 order, certification, or permit shall be served upon the
 15 department and the board and shall be utilized as part of
 16 their final site selection process. Prior to the issuance of
 17 a preliminary decision by the department of health and
 18 pursuant to rules adopted by the board of health, the
 19 department of health shall provide an opportunity for public
 20 review and comment.

21 (4) Within 22 months following acceptance of an
 22 application for a facility as defined in (a) and (d) ~~(e)~~ of
 23 75-20-104(10) and for a facility as defined in (b) and (c)
 24 through (d) of 75-20-104(10) which is more than 30 miles in
 25 length and within 1 year for a facility as defined in (b)

1 and--(c) through--(d) of 75-20-104(10) which is 30 miles or
 2 less in length, the department shall make a report to the
 3 board--which--shall--contain--the--department's--studies,
 4 evaluations,--recommendations,--other--pertinent--documents
 5 resulting--from--its--study--and--evaluation,--and--an
 6 environmental impact statement or analysis prepared pursuant
 7 to the Montana Environmental Policy Act,--if--any,--if--the
 8 application is for a combination of two or more facilities,
 9 the department shall make its report to the board within the
 10 greater--of--the--lengths--of--time--provided--for--in--this
 11 subsection for either of the facilities:

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

22 SECTION 9. SECTION 75-20-202, MCA, IS AMENDED TO READ:

23 "75-20-202. Exemptions. (1) A certificate is not
 24 required under this chapter for a facility under diligent
 25 onsite physical construction or in operation on January 1,

1 1973.

2 (2) The board may adopt reasonable rules establishing
 3 exemptions from this chapter for the relocation,
 4 reconstruction, or upgrading of a facility that:

5 (a) would otherwise be covered by this chapter; and

6 (b) (i) is unlikely to have a significant
 7 environmental impact by reason of length, size, location,
 8 available space or right-of-way, or construction methods; or

9 (ii) utilizes coal, wood, biomass, grain, wind, or sun
 10 as a fuel source and the technology of which will result in
 11 greater efficiency, promote energy conservation, and promote
 12 greater system reliability than the existing facility.

13 (3) This chapter does not apply to a facility defined
 14 in 75-20-104(10)(c) that has been designated by the governor
 15 for environmental review by an executive agency of the state
 16 for the purpose of complying with Title 75, chapter 1,
 17 pursuant to Executive Order 4-81 and prior to [the effective
 18 date of this act]."

19 Section 10. Section 75-20-218, MCA, is amended to
 20 read:

21 "75-20-218. Hearing date -- location -- department to
 22 act as staff -- hearings to be held jointly. (1) Upon
 23 receipt of the department's report submitted under
 24 75-20-216, the board shall set a date for a hearing to begin
 25 not more than 120 days after the receipt. ~~Except--for--these~~

1 ~~hearings--involving-applications-submitted-for-facilities-as~~
 2 ~~defined-in--(b)--and--(c)--of--75-20-104(18),--certification~~
 3 Certification hearings shall be conducted by the board in
 4 the county seat of Lewis and Clark County or the county in
 5 which the facility or the greater portion thereof is to be
 6 located.

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

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

22 Section 11. Section 75-20-303, MCA, is amended to
 23 read:

24 "75-20-303. Opinion issued with decision -- contents.

25 (1) In rendering a decision on an application for a

1 certificate, the board shall issue an opinion stating its
 2 reasons for the action taken.

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

7 (3) Any certificate issued by the board shall include
 8 the following:

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

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

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

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

17 (iv) alternatives to the proposed facility;

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

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

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

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

1 the following time limits during which construction of a
2 facility must be completed:

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

6 (b) For a facility as defined in (b) ~~or~~ (c) ~~or~~ (d)
7 of 75-20-104(10) that is 30 miles or less in length, the
8 time limit is 5 years.

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

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

20 Section ~~12~~ Section ~~75-20-304~~ MEA, is amended to
21 read:

22 "75-20-304. Waiver of provisions of certification
23 proceedings: (1) The board may waive compliance with any of
24 the provisions of 75-20-216 through 75-20-222, 75-20-501,
25 and this part if the applicant makes a clear and convincing

1 showing to the board at a public hearing that an immediate
2 urgent need for a facility exists and that the applicant did
3 not have knowledge that the need for the facility existed
4 sufficiently in advance to fully comply with the provisions
5 of 75-20-216 through 75-20-222, 75-20-501, and this part.

6 (2) The board may waive compliance with any of the
7 provisions of this chapter upon receipt of notice by a
8 utility or person subject to this chapter that a facility or
9 associated facility has been damaged or destroyed as a
10 result of fire, flood, or other natural disaster or as the
11 result of insurrection, war, or other civil disorder and
12 there exists an immediate need for construction of a new
13 facility or associated facility or the relocation of a
14 previously existing facility or associated facility in order
15 to promote the public welfare.

16 (3) The board shall waive compliance with the
17 requirements of subsections (2)(c), (3)(b), and (3)(c) of
18 75-20-301 and 75-20-501(5) and the requirements of
19 subsections (1)(a)(iv) and (v) of 75-20-211, 75-20-216(3),
20 and 75-20-303(3)(a)(iv) relating to consideration of
21 alternative sites if the applicant makes a clear and
22 convincing showing to the board at a public hearing that:

23 (a) a proposed facility will be constructed in a
24 county where a single employer within the county has
25 permanently curtailed or ceased operations causing a loss of

1 250--or-more-permanent-jobs-within-2-years-at-the-employer's
2 operations-within-the-preceding-10-year-period;

3 (b)--the-county-and-municipal-governing-bodies-in-whose
4 jurisdiction-the-facility-is-proposed-to-be-located--support
5 by-resolution-such-a-waiver;

6 (c)--the-proposed-facility-will-be-constructed-within-a
7 15-mile--radius--of--the-operations-that-have-ceased-or-been
8 curtailed; and

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

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

17 (5)--The-waiver-provided-for-in-subsection-(3)-does-not
18 apply-to-consideration-of-alternatives--or--minimum--adverse
19 environmental--impact--for-a-facility-defined-in-subsections
20 (10)(b), (c), (d), (e), (f) of--75-20-104,--for--an
21 associated--facility-defined-in-subsection-(3)-of-75-20-104,
22 or-for-any-portion-of-or-process-in-a--facility--defined--in
23 subsection--(10)(a)--of--75-20-104--to--the--extent--that--the
24 process-or-portion-of-the--facility--is--not--subject--to--a
25 permit--issued--by--the--department--of--health--or-board-of

1 health;

2 (6)--The-applicant-shall-pay-all-expenses--required--to
3 process--and--conduct--a--hearing--on-a-waiver-request-under
4 subsection--(3).--However,--any--payments--made--under--this
5 subsection--shall--be--credited--toward--the--fee-paid-under
6 75-20-215-to-the-extent-the-data-or--evidence--presented--at
7 the--hearing--or--the-decision-of-the-board-under-subsection
8 (3)--can-be-used-in-making--a--certification--decision--under
9 this-chapter;

10 (7)--The--board--may--grant--only--one--waiver--under
11 subsections-(3)-and-(4)-for-each-permanent-loss-of--jobs--as
12 defined-in-subsection-(3)(a);"

13 Section 12. Section 75-20-1202, MCA, is amended to
14 read:

15 "75-20-1202. Definitions. As used in this part and
16 75-20-201 through 75-20-203, the following definitions
17 apply:

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

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

22 (ii) converting, enriching, fabricating, or
23 reprocessing uranium minerals or nuclear fuels; or

24 (iii) storing or disposing of radioactive wastes or
25 materials from a nuclear facility.

1 (b) "Nuclear facility" does not include any
2 small-scale facility used solely for educational, research,
3 or medical purposes not connected with the commercial
4 generation of energy.

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

8 NEW SECTION. Section 13. Water leasing program. (1)
9 There is a water leasing program administered by the
10 department on behalf of the state of Montana. WATER LEASES
11 ISSUED UNDER THIS PROGRAM MUST BE APPROVED BY THE BOARD.

12 (2) The department may acquire rights to water needed
13 for leasing under this program through appropriation of
14 water in its own name or by agreement with or purchase from
15 another holder of water rights.

16 (3) Water for leasing under the water leasing program
17 must be obtained from the following sources:

18 (a) any existing or future reservoir in a basin
19 concerning which a temporary preliminary decree, a
20 preliminary decree under 85-2-231, or a final decree under
21 85-2-234 has been entered;

22 (b) Fort Peck Reservoir, if an agreement between the
23 department and the federal government concerning the
24 acquisition of water and the sharing of revenues with the
25 state is in effect;

1 (c) Tiber, Canyon Ferry, Hungry Horse, or Yellowtail
2 Reservoirs if and for so long as there is an agreement
3 between the department and the federal government concerning
4 the acquisition of water and sharing of revenues with the
5 state from one or more of these reservoirs; and

6 (d) any other existing or future federal reservoir:

7 (i) located in a basin concerning which a temporary
8 preliminary decree, a preliminary decree under 85-2-231, or
9 a final decree under 85-2-234 has been entered; and

10 (ii) for which and for so long as there is an agreement
11 between the department and the federal government concerning
12 the acquisition of water and the sharing of revenues with
13 the state.

14 (4) Water may be leased for any beneficial use. The
15 amount of water that can be leased under this program for
16 all beneficial uses shall not exceed 50,000 acre-feet.

17 (5) The term of any lease may not exceed 50 years. A
18 term may be extended up to another 50 years if the
19 department again determines the desirability of leasing by
20 applying the considerations set forth in subsection (7). In
21 making such a redetermination, the department may require
22 the completion of an environmental impact statement in
23 accordance with subsection (6).

24 (6) The department shall require the completion of an
25 environmental impact statement under the provisions of Title

1 75, chapter 1, for lease applications that would result in
 2 the consumption of 4,000 acre-feet a year or more and 5.5
 3 cubic feet per second or more of water and for any other
 4 application for which an environmental impact statement is
 5 required by law. The department shall require the
 6 completion of an environmental impact statement whenever the
 7 cumulative effect of more than one application for a lease
 8 would constitute a probable significant environmental
 9 impact.

10 (7) Upon application by any person to lease water, the
 11 department shall make an initial determination of whether it
 12 is desirable for the department to lease water to the
 13 applicant. Such a determination of desirability shall be
 14 made solely on the following considerations:

- 15 (a) the content of the environmental impact statement,
 16 if required;
- 17 (b) whether there is sufficient water available under
 18 the water leasing program; and
- 19 (c) whether the criteria, except as to legislative
 20 approval, set forth in 85-2-311 have been satisfied.

21 (8) The department shall for any agreement require
 22 commercially reasonable terms and conditions, which may
 23 include the requirement that up to 25% of the water to be
 24 leased be made available to a potential user for any
 25 beneficial use upon payment by such user of the costs of

1 tapping into and removing water from the applicant's
 2 project. The department may differentiate in pricing,
 3 depending on the proposed beneficial use of the water.

4 (9) The lease of water or the use of water under a
 5 lease does not constitute a permit as provided in 85-2-102
 6 and does not establish a right to appropriate water within
 7 the meaning of Title 85, chapter 2, part 3.

8 (10) For purposes of the water leasing program
 9 established in this section, it is the intent of the
 10 legislature that the state act as a proprietor.

11 Section 14. Section 85-1-205, MCA, is amended to read:

12 "85-1-205. Acquisition of water in federal reservoirs.
 13 ~~{+}~~ The department may acquire water or water storage by
 14 purchase option or agreement with the federal government
 15 from any federal reservoir for the purpose of sale, rent, or
 16 distribution for ~~industrial-and-other--uses~~ any beneficial
 17 use. In such cases, the department is not required to
 18 construct any diversion or appropriation facilities or
 19 works, and it may sell, rent, or distribute such water at
 20 such rates and under such terms and conditions as it
 21 considers appropriate, ~~except-as-provided-in-subsection-(2).~~

22 ~~{2}--Until--a--final--decree--has--been--issued--pursuant--to~~
 23 ~~85-2-234--concerning--the--waters--in--a--federal--reservoir,--the~~
 24 ~~department--may--sell,--rent,--or--distribute--such--water--only~~
 25 ~~after--a--permit--has--been--issued--to--an--applicant--for--purchase,~~

1 ~~rent, or distribution of water in accordance with part 3 of~~
2 ~~this chapter."~~

3 Section 15. Section 85-2-316, MCA, is amended to read:

4 "85-2-316. Reservation of waters. (1) The state or any
5 political subdivision or agency thereof or the United States
6 or any agency thereof may apply to the board to reserve
7 waters for existing or future beneficial uses or to maintain
8 a minimum flow, level, or quality of water throughout the
9 year or at such periods or for such length of time as the
10 board designates.

11 (2) Water may be reserved only for existing or future
12 beneficial uses in the following river basins:

13 (a) the Clark Fork River and its tributaries to its
14 confluence with Lake Pend Oreille in Idaho;

15 (b) the Kootenai River and its tributaries to its
16 confluence with Kootenay Lake in British Columbia;

17 (c) the St. Mary River and its tributaries to its
18 confluence with the Oldman River in Alberta;

19 (d) the Little Missouri River and its tributaries to
20 its confluence with Lake Sakakawea in North Dakota;

21 (e) the Missouri River and its tributaries to its
22 confluence with the Yellowstone River in North Dakota; and

23 (f) the Yellowstone River AND ITS TRIBUTARIES to its
24 confluence with the Missouri River in North Dakota.

25 ~~{2}(3)~~ Upon receiving an application, the department

1 shall proceed in accordance with 85-2-307 through 85-2-309.
2 After the hearing provided in 85-2-309, the board shall
3 decide whether to reserve the water for the applicant. The
4 department's costs of giving notice, holding the hearing,
5 conducting investigations, and making records incurred in
6 acting upon the application to reserve water, except the
7 cost of salaries of the department's personnel, shall be
8 paid by the applicant. In addition, a reasonable proportion
9 of the department's cost of preparing an environmental
10 impact statement shall be paid by the applicant unless
11 waived by the department upon a showing of good cause by the
12 applicant.

13 ~~{3}(4)~~ (a) The board may not adopt an order reserving
14 water unless the applicant establishes to the satisfaction
15 of the board:

16 ~~{a}(i)~~ the purpose of the reservation;

17 ~~{b}(ii)~~ the need for the reservation;

18 ~~{c}(iii)~~ the amount of water necessary for the purpose
19 of the reservation;

20 ~~{d}(iv)~~ that the reservation is in the public interest.

21 (b) In determining the public interest under
22 subsection (4)(a)(iv), the board may not adopt an order
23 reserving water for withdrawal and transport for use outside
24 the state unless the applicant proves by clear and
25 convincing evidence that:

1 (i) the proposed out-of-state use of water is not
2 contrary to water conservation in Montana; and

3 (ii) the proposed out-of-state use of water is not
4 otherwise detrimental to the public welfare of the citizens
5 of Montana.

6 (c) In determining whether the applicant has proved by
7 clear and convincing evidence that the requirements of
8 subsections (4)(b)(i) and (4)(b)(ii) are met, the board
9 shall consider the following factors:

10 (i) whether there are present or projected water
11 shortages within the state of Montana;

12 (ii) whether the water that is the subject of the
13 application could feasibly be transported to alleviate water
14 shortages within the state of Montana;

15 (iii) the supply and sources of water available to the
16 applicant in the state where the applicant intends to use
17 the water; and

18 (iv) the demands placed on the applicant's supply in
19 the state where the applicant intends to use the water.

20 (d) When applying for a reservation to withdraw and
21 transport water for use outside the state, the applicant
22 shall submit to and comply with the laws of the state of
23 Montana governing the appropriation, lease, use, and
24 reservation of water.

25 ~~(4)~~(5) If the purpose of the reservation requires

1 construction of a storage or diversion facility, the
2 applicant shall establish to the satisfaction of the board
3 that there will be progress toward completion of the
4 facility and accomplishment of the purpose with reasonable
5 diligence in accordance with an established plan.

6 ~~(5)~~(6) The board shall limit any reservations after
7 May 9, 1979, for maintenance of minimum flow, level, or
8 quality of water that it awards at any point on a stream or
9 river to a maximum of 50% of the average annual flow of
10 record on gauged streams. Ungauged streams can be allocated
11 at the discretion of the board.

12 ~~(6)~~(7) After the adoption of an order reserving
13 waters, the department may reject an application and refuse
14 a permit for the appropriation of reserved waters or may,
15 with the approval of the board, issue the permit subject to
16 such terms and conditions it considers necessary for the
17 protection of the objectives of the reservation.

18 ~~(7)~~(8) Any person desiring to use water reserved to a
19 conservation district for agricultural purposes shall make
20 application for such use with the district, and the district
21 upon approval of the application must inform the department
22 of the approved use. The department shall maintain records
23 of all uses of water reserved to conservation districts and
24 be responsible, when requested by the districts, for
25 rendering technical and administrative assistance within the

1 department's staffing and budgeting limitations in the
 2 preparation and processing of such applications for the
 3 conservation districts. The department shall, within its
 4 staffing and budgeting limitations, complete any feasibility
 5 study requested by the districts within 12 months of the
 6 time the request was made. The board shall extend the time
 7 allowed to develop a plan identifying projects for utilizing
 8 a district's reservation so long as the conservation
 9 district makes a good faith effort, within its staffing and
 10 budget limitations, to develop a plan.

11 ~~(8)~~(9) A reservation under this section shall date
 12 from the date the order reserving the water is adopted by
 13 the board and shall not adversely affect any rights in
 14 existence at that time.

15 ~~(9)~~(10) The board shall, periodically but at least once
 16 every 10 years, review existing reservations to ensure that
 17 the objectives of the reservation are being met. Where the
 18 objectives of the reservation are not being met, the board
 19 may extend, revoke, or modify the reservation.

20 ~~(10)~~(11) The board may modify an existing or future
 21 order originally adopted to reserve water for the purpose of
 22 maintaining minimum flow, level, or quality of water, so as
 23 to reallocate such reservation or portion thereof to an
 24 applicant who is a qualified reservant under this section.
 25 Reallocation of reserved water may be made by the board

1 following notice and hearing wherein the board finds that
 2 all or part of the reservation is not required for its
 3 purpose and that the need for the reallocation has been
 4 shown by the applicant to outweigh the need shown by the
 5 original reservant. Reallocation of reserved water shall not
 6 adversely affect the priority date of the reservation, and
 7 the reservation shall retain its priority date despite
 8 reallocation to a different entity for a different use. The
 9 board may not reallocate water reserved under this section
 10 on any stream or river more frequently than once every 5
 11 years.

12 ~~(11)~~(12) Nothing in this section vests the board with
 13 the authority to alter a water right that is not a
 14 reservation.

15 (13) The department shall undertake a program to
 16 educate the public, other state agencies, and political
 17 subdivisions of the state as to the benefits of the
 18 reservation process and the procedures to be followed to
 19 secure the reservation of water. The department shall
 20 provide technical assistance to other state agencies and
 21 political subdivisions in applying for reservations under
 22 this section.

23 (14) Water reserved under this section is not subject
 24 to the state water leasing program established under
 25 [section ~~14~~ ~~12~~ 13]."

1 NEW SECTION. Section 16. Reservations within Missouri
 2 River basin. (1) The state or any agency or political
 3 subdivision thereof or the United States or any agency
 4 thereof that desires to apply for a reservation of water in
 5 the Missouri River basin shall file ~~a claim~~ AN APPLICATION
 6 pursuant to 85-2-316 no later than July 1, 1987.

7 (2) The SUBJECT TO LEGISLATIVE APPROPRIATION, THE
 8 department shall provide technical and financial assistance
 9 to other state agencies and political subdivisions in
 10 applying for reservations within the Missouri River basin.

11 (3) Before December 31, 1989, the board shall make a
 12 final determination in accordance with 85-2-316 on all
 13 applications filed before July 1, 1987, for reservations of
 14 water in the Missouri River basin.

15 (4) Water reservations approved by the board under
 16 this section have a priority date of July 1, 1985. The board
 17 shall by order establish the relative priority of
 18 applications approved under this section.

19 Section 17. Section 85-2-112, MCA, is amended to read:

20 "85-2-112. Department duties. The department shall:

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

24 (2) prescribe procedures, forms, and requirements for
 25 applications, permits, certificates, claims of existing

1 rights, and proceedings under this chapter and prescribe the
 2 information to be contained in any application, claim of
 3 existing right, or other document to be filed with the
 4 department under this chapter not inconsistent with the
 5 requirements of this chapter;

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

11 (4) in cooperation with other state agencies,
 12 institutions, colleges, and universities, establish and
 13 maintain a centralized and efficient water resources data
 14 management system sufficient to make available and readily
 15 accessible, in a usable format, to state agencies and other
 16 interested persons, information on the state's water
 17 resources, out-of-state water resources that affect the
 18 state, existing and potential uses, and existing and
 19 potential demand. All other state agencies, institutions,
 20 and colleges and universities shall cooperate with the
 21 department in the development and maintenance of this
 22 system.

23 ~~†4~~(5) cooperate with, assist, advise, and coordinate
 24 plans and activities with the federal, state, and local
 25 agencies in matters relating to this chapter;

1 †5†(6) upon request by any person, cooperate with,
2 assist, and advise that person in matters pertaining to
3 measuring water or filing claims of existing rights with a
4 district court under this chapter;

5 †6†(7) adopt rules necessary to reject, modify, or
6 condition permit applications in highly appropriated basins
7 or subbasins as provided in 85-2-319."

8 Section 18. Section 85-1-203, MCA, is amended to read:

9 "85-1-203. State water plan. (1) The department shall
10 gather from any source reliable information relating to
11 Montana's water resources and prepare therefrom a continuing
12 comprehensive inventory of the water resources of the state.
13 In preparing this inventory, the department may conduct
14 studies; adopt studies made by other competent water
15 resource groups, including federal, regional, state, or
16 private agencies; perform research or employ other competent
17 agencies to perform research on a contract basis; and hold
18 public hearings in affected areas at which all interested
19 parties shall be given an opportunity to appear.

20 (2) The department shall formulate and, with the
21 approval of the board, adopt and from time to time amend,
22 extend, or add to a comprehensive, coordinated multiple-use
23 water resources plan known as the "state water plan". The
24 state water plan may be formulated and adopted in sections,
25 these sections corresponding with hydrologic divisions of

1 the state. The state water plan shall set out a progressive
2 program for the conservation, development, and utilization
3 of the state's water resources and propose the most
4 effective means by which these water resources may be
5 applied for the benefit of the people, with due
6 consideration of alternative uses and combinations of uses.
7 Before adoption of the state water plan or any section
8 thereof, the department shall hold public hearings in the
9 state or in an area of the state encompassed by a section
10 thereof if adoption of a section is proposed. Notice of the
11 hearing or hearings shall be published for 2 consecutive
12 weeks in a newspaper of general county circulation in each
13 county encompassed by the proposed plan or section thereof
14 at least 30 days prior to the hearing.

15 (3) The department shall submit to the water policy
16 committee established in [section 21 19 20] and to each
17 general session of the legislature the state water plan or
18 any section thereof or amendments, additions, or revisions
19 thereto which the department has formulated and adopted.

20 (4) The department shall prepare a continuing
21 inventory of the groundwater resources of the state. The
22 groundwater inventory shall be included in the comprehensive
23 water resources inventory described in subsection (1) above
24 but shall be a separate component thereof.

25 (5) The department shall publish the comprehensive

1 inventory, the state water plan, the groundwater inventory,
 2 or any part of each, and the department may assess and
 3 collect a reasonable charge for these publications.

4 (6) In developing and revising the state water plan as
 5 provided in this section, the department shall consult with
 6 the water policy committee established in [section ~~21~~ 19 20]
 7 and solicit the advice of the committee in carrying out its
 8 duties under this section."

9 Section 19. Section 85-1-621, MCA, is amended to read:

10 "85-1-621. Report to the legislature. The department
 11 shall prepare a biennial report to the legislature
 12 describing the status of the water development program. The
 13 report must describe ongoing projects and activities and
 14 those which have been completed during the biennium. The
 15 report must identify and rank in order of priority the
 16 projects for which the department desires to seek
 17 congressional authorization and funding and the efforts the
 18 department will undertake in attempting to secure such
 19 authorization and funding. The report must also describe
 20 proposed projects and activities for the coming biennium and
 21 recommendations for necessary appropriations. A copy of the
 22 report shall be submitted to the president of the senate and
 23 the speaker of the house, to the members of the water policy
 24 committee established in [section ~~21~~ 19 20], and to such
 25 other members of the legislature as may request a copy."

1 NEW SECTION. Section 20. Water policy committee.
 2 (1) There is a permanent water policy committee of the
 3 legislature. The committee consists of eight members. The
 4 senate committee on committees and the speaker of the house
 5 of representatives shall each appoint four members on a
 6 bipartisan basis. The committee shall elect its chairman
 7 and vice-chairman. The committee shall meet as often as
 8 necessary, including during the interim between sessions, to
 9 perform the duties specified within this section.

10 (2) On a continuing basis, the committee shall:

11 (a) advise the legislature on the adequacy of the
 12 state's water policy and of important state, regional,
 13 national, and international developments which affect
 14 Montana's water resources;

15 (b) oversee the policies and activities of the
 16 department of natural resources and conservation, other
 17 state executive agencies, and other state institutions, as
 18 they affect the water resources of the state; and

19 (c) communicate with the public on matters of water
 20 policy as well as the water resources of the state.

21 (3) On a regular basis, the committee shall:

22 (a) analyze and comment on the state water plan
 23 required by 85-1-203, when filed by the department;

24 (b) analyze and comment on the report of the status of
 25 the state's water development program required by 85-1-621,

1 when filed by the department;

2 (c) analyze and comment on water-related research
3 undertaken by any state agency, institution, college, or
4 university;

5 (d) analyze, verify, and comment on the adequacy of
6 and information contained in the water resources data
7 management system maintained by the department under
8 85-2-112; and

9 (e) report to the legislature, not less than once
10 every biennium.

11 (4) The environmental quality council shall provide
12 staff assistance to the committee. The committee may
13 contract with experts and consultants, in addition to
14 receiving assistance from the environmental quality council,
15 in carrying out its duties under this section.

16 Section 21. Section 85-2-122, MCA, is amended to read:

17 "85-2-122. Penalties. A person who violates or refuses
18 or neglects to comply with ~~85-2-3017--85-2-402(1)7--and~~
19 ~~85-2-403(3)~~ the provisions of this chapter, any order of the
20 department, or any rule of the board is guilty of a
21 misdemeanor."

22 NEW SECTION. Section 22. Extension of authority. Any
23 existing authority of the board and the department of
24 natural resources and conservation to make rules on the
25 subject of the provisions of this act is extended to the

1 provisions of this act.

2 Section 23. Section 7, Chapter 706, Laws of 1983, is
3 amended to read:

4 "Section 7. Termination date. ~~This--act~~ Section 4 of
5 [this act] terminates July 1, 1985. The other sections do
6 not terminate and are permanent law."

7 NEW SECTION. Section 24. Repealer. Section 85-2-104,
8 MCA, is repealed.

9 NEW SECTION. Section 25. Codification instruction.
10 Sections ~~147-177-and-21 127-157-AND-19~~ 13, 16, AND 20 are
11 intended to be codified as an integral part of Title 85,
12 chapter 2, and the provisions of Title 85, chapter 2, apply
13 to sections ~~147-177-and-21 127-157-AND-19~~ 13, 16, AND 20.

14 NEW SECTION. Section 26. Severability. If a part of
15 this act is invalid, all valid parts that are severable from
16 the invalid part remain in effect. If a part of this act is
17 invalid in one or more of its applications, the part remains
18 in effect in all valid applications that are severable from
19 the invalid applications.

20 NEW SECTION. Section 27. Applicability. This act
21 applies to all permit applications, change in appropriation
22 right applications, water sales and lease applications, and
23 reservation applications filed and pending with the
24 department on July 1, 1985, but upon which a hearing under
25 Title 85, chapter 2, has not yet commenced.

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1 NEW SECTION. Section 28. Effective date. This act is
2 effective July 1, 1985.

-End-