

1 Senate BILL NO. 299
 2 INTRODUCED BY Story
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4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 5 MONTANA WATER USE LAWS TO TRANSFER FROM THE DEPARTMENT OF
 6 NATURAL RESOURCES AND CONSERVATION TO THE DISTRICT COURTS
 7 THE AUTHORITY TO DETERMINE WATER RIGHTS AND PRIORITIES;
 8 AMENDING SECTIONS 85-1-101, 85-2-102, 85-2-112, 85-2-113,
 9 85-2-123, 85-2-124, 85-2-301 THROUGH 85-2-303, 85-2-306,
 10 85-2-316 THROUGH 85-2-319, 85-2-401 THROUGH 85-2-403,
 11 85-2-508, 85-2-509, 85-2-511, AND 85-2-512, MCA."

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

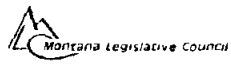
14 NEW SECTION. Section 1. Statement of purpose. The
 15 purpose of [this act] is to remove from the department of
 16 natural resources and conservation and to return to the
 17 district courts the authority to determine water rights and
 18 priorities. [This act] provides that a portion of this
 19 authority will be transferred from the department to the
 20 district courts after a portion of a water division has been
 21 finally adjudicated. After the entire adjudication process
 22 has been completed, only the district courts will have
 23 authority to adjudicate water rights.

24 NEW SECTION. Section 2. Water rights to be determined
 25 in district court. A person may not appropriate water or

1 commence construction of diversion, impoundment, withdrawal,
 2 or distribution works therefor or change the place of
 3 diversion, place of use, purpose of use, or place of storage
 4 of the water from a source of water to which existing rights
 5 have been determined except by applying for and receiving a
 6 decree from the district court of the county in which the
 7 diversion is to be made or, if no diversion, from the
 8 district court of a county in which the water is to be used.

9 NEW SECTION. Section 3. Procedure for filing water
 10 right application in district court -- statement of
 11 opposition -- fees. (1) To acquire a water right decree, a
 12 person must first file with the clerk of the district court
 13 a verified application, setting forth facts supporting the
 14 ruling sought. The clerk shall send a copy of the
 15 application to the department.

16 (2) A person who wishes to oppose the application
 17 shall file with the clerk of district court a verified
 18 statement of opposition, setting forth reasons as to why the
 19 application should not be granted or why it should be
 20 granted only in part or upon certain conditions. The
 21 statement of opposition may be filed on behalf of all owners
 22 of water rights who may be detrimentally affected by the
 23 granting of the application and who by signing the statement
 24 of opposition, in person or by attorney, consent to being
 25 included in the statement. The clerk shall send a copy of



-2- INTRODUCED BILL
 SB 299

1 the statement of opposition to the department. A statement
2 of opposition must be filed by the last day of the second
3 month from the date on which the application was filed.

4 (3) The cost of filing an application for a water
5 right is \$10, and the cost of filing a statement of
6 opposition is \$10.

7 (4) An application for a water right decree must
8 include the following:

9 (a) a legal description of the diversion or proposed
10 diversion or, if no diversion, of the place of use;

11 (b) a description of the source of water;

12 (c) the date of the initiation of the appropriation or
13 proposed appropriation;

14 (d) the amount of water claimed; and

15 (e) the use or proposed use of the water.

16 (5) An application for a decree of change of a
17 previously decreed water right must include the following:

18 (a) a complete statement of the planned change or
19 increase in appropriation, including a description of all
20 water rights to be established or changed by the plan;

21 (b) a map showing the approximate location of historic
22 use of the rights; and

23 (c) records or summaries of records of each decree or
24 permit upon which the applicant intends to rely.

25 NEW SECTION. Section 4. Resumes of applications. (1)

1 No later than the 15th day of each month, the clerk of the
2 district court shall prepare a resume of each application
3 that has been filed within the county during the preceding
4 month. The resume must include the name and address of the
5 applicant, a description of the water right involved, and a
6 description of the ruling sought. The resume may be provided
7 by the applicant at the time of filing the application or at
8 the time of any republication pursuant to subsection (2), or
9 if no resume is provided, the clerk shall prepare the resume
10 for publication. The clerk shall promptly submit to each
11 applicant a bill for costs incurred by the district court in
12 publishing the resume of the application. No ruling or
13 decree may be entered prior to payment of the charges.

14 (2) No later than the end of each month, the clerk
15 shall publish each resume in a newspaper or newspapers as
16 are necessary to obtain general circulation once in every
17 county affected, as determined by the district judge. If at
18 the request of or as the result of amendments made by an
19 applicant the resume of an application is republished, the
20 applicant shall pay the cost of republication.

21 (3) No later than the end of the month, a copy of the
22 resume must be mailed by the clerk to each person who the
23 water master has reason to believe would be affected or who
24 has requested a copy by submitting his name and address to
25 the clerk. The clerk shall maintain a mailing list of names

1 and addresses so submitted, and persons desiring to have
 2 their names and addresses retained on the list must resubmit
 3 them by January 5 each year. Persons who have not
 4 resubmitted their names and addresses may not be retained on
 5 the list, but they may submit their names and addresses at
 6 any time thereafter for inclusion on the list. In order to
 7 obtain a copy of a resume for a particular month, a person's
 8 name and address must be received not later than the fifth
 9 day of the month of publication of the resume. A fee of \$24
 10 is charged for inclusion on the mailing list for a calendar
 11 year, prorated at \$2 per month for a lesser period. A copy
 12 of the resume must be furnished without charge to the
 13 department.

14 NEW SECTION. Section 5. Investigations by water
 15 master -- rereferral to water court. (1) The water master,
 16 without conducting a formal hearing, shall make such
 17 investigations as are necessary to determine whether or not
 18 the statements in the application and statements of
 19 opposition are true and to become fully informed on the
 20 subject matter of the applications and statements of
 21 opposition. The water master shall consult with the
 22 department. The department shall respond in writing within
 23 30 days, unless such time is extended by the water master,
 24 which response must be filed in the proceedings and mailed
 25 by the clerk to all parties of record before any ruling is

1 entered or becomes effective. A district judge who is acting
 2 as a water master has the same authority as provided for the
 3 water master in this subsection.

4 (2) If the application is rereferred to the district
 5 judge by the water master prior to consultation, the
 6 department shall furnish a written recommendation to the
 7 court within 30 days of rereferral. The report must be filed
 8 in the proceedings and mailed by the clerk to all parties of
 9 record before any ruling is entered or becomes effective.
 10 The district judge may request such written report from the
 11 department if he desires.

12 NEW SECTION. Section 6. Rulings by water master. (1)
 13 Within 60 days from the last day on which statements of
 14 opposition may be filed with respect to a particular
 15 application, unless such time is extended by the district
 16 judge for good cause shown, the water master shall make his
 17 ruling on the application unless he determines to rerefer
 18 the matter to the district judge as specified in subsection
 19 (2). The ruling may disapprove the application in whole or
 20 in part in the discretion of the water master, even though
 21 no statement of opposition has been filed. The ruling of the
 22 water master must give the names of the applicants with
 23 respect to each water right involved, the location of the
 24 point of diversion or place of use, the means of diversion,
 25 the type of use, the amount and priority, and other

1 pertinent information. In the case of a plan for increase in
 2 appropriation, the ruling must include a complete statement
 3 of such plan as approved or disapproved. The ruling must be
 4 filed with the clerk, subject to judicial review. A copy of
 5 the ruling must be mailed by the clerk by certified mail to
 6 the applicant, to each person who has filed a statement of
 7 opposition, and to the department.

8 (2) In the case of applications with respect to which
 9 a statement or statements of opposition have been filed, the
 10 water master may determine in his discretion not to make a
 11 ruling as specified in subsection (1) and to rerefer the
 12 matter to the district judge for a decision as provided in
 13 [sections 7 through 10]. Such rereferral is accomplished by
 14 an order of the water master that must be entered during the
 15 month following the last month in which statements of
 16 opposition may be filed with respect to the particular
 17 application, unless such time is extended by the district
 18 judge for good cause shown. The water master shall rerefer
 19 the matter to the district judge at any time before the
 20 water master's hearing upon a motion to rerefer by any
 21 contesting party certifying that party's intent to protest
 22 an adverse ruling of the water master. A motion to rerefer
 23 is not a prerequisite to a protest of the ruling of the
 24 water master. A copy of the order must be mailed by the
 25 clerk by certified mail to the applicant, to each person who

1 has filed a statement of opposition, and to the department.

2 NEW SECTION. Section 7. Proceedings in district
 3 court. (1) Every 6 months, the chief judge of each judicial
 4 district or the judge in a single-judge district shall
 5 schedule hearings on rulings with respect to which a protest
 6 has been filed and on matters which have been rereferred to
 7 the district judge by the water master during the preceding
 8 6 months.

9 (2) Within 20 days after the mailing thereof, any
 10 person, including the department, who wishes to protest or
 11 support a ruling of the water master shall file a written
 12 motion with the clerk and a copy of the motion with the
 13 water master. The motion must clearly identify the matter
 14 and state the factual and legal grounds for the motion. A
 15 copy of the motion must be sent by the clerk by certified
 16 mail to the other parties and to the department. Upon the
 17 filing of the motion, the party shall pay a filing fee of
 18 \$10 plus an additional amount sufficient to cover the cost
 19 of the mailing required by this subsection, except that no
 20 person who has already appeared in the matter may be charged
 21 the filing fee.

22 NEW SECTION. Section 8. Hearings. (1) Hearings must
 23 be conducted in accordance with the Montana Rules of Civil
 24 Procedure with regard to rulings on which a protest has been
 25 filed and matters which have been rereferred to the district

1 judge by the water master. However, no pleadings may be
 2 required. The court is not bound by findings of the water
 3 master. The department shall appear at the hearings to
 4 furnish pertinent information and may be examined by any
 5 party. The applicant shall appear either in person or by
 6 counsel and has the burden of sustaining the application,
 7 whether it has been granted or denied by the ruling or been
 8 rereferred by the water master, and, in the case of a change
 9 of water right, the burden of showing absence of any adverse
 10 effect alleged in the protest or in a statement of
 11 opposition. Any interested person may participate in the
 12 hearing, either in person or by counsel, if he enters his
 13 appearance in writing prior to the date on which hearings
 14 are to commence. Each interested person, if he has not
 15 already appeared, pursuant to [section 7], in the matter in
 16 which the hearing is to be held and paid an appropriate
 17 filing or docket fee, shall pay a docket fee of \$10 upon
 18 filing the entry of appearance under this subsection. Such
 19 entry of appearance must identify the matter with respect to
 20 which the appearance is being made. Service of copies of
 21 applications, statements of opposition, protests, or any
 22 other documents is not necessary for jurisdictional
 23 purposes, but the district judge may order service of copies
 24 of documents on any person in any manner that he considers
 25 appropriate.

1 (2) The hearing must be conducted in the district
 2 court of the county in which is located the point of
 3 diversion of the water right or, if no diversion, in a
 4 county where the water is being used or is to be used.

5 NEW SECTION. Section 9. Decision of district judge.
 6 (1) A decision of the district judge with respect to a
 7 protested ruling of the water master must either confirm,
 8 modify, reverse, or reverse and remand such ruling. In the
 9 case of the modification of a ruling, the decision may grant
 10 a different priority from that granted by the water master
 11 and may specify its own terms and conditions with respect to
 12 a change of water right.

13 (2) A decision of the district judge in regard to a
 14 matter that has been rereferred by the water master disposes
 15 fully of such matter and may contain such provisions as the
 16 district judge considers appropriate. The district judge
 17 shall confirm and approve by judgment and decree a ruling of
 18 the water master with respect to which no protest was filed,
 19 except that the district judge may reverse or reverse and
 20 remand any such ruling which he considers to be contrary to
 21 law.

22 (3) Any decision of the district judge as specified in
 23 subsections (1) and (2) dealing with a change of water right
 24 may include the condition that the approval of such change
 25 is subject to reconsideration by the district judge on the

1 question of adverse effect on the rights of others during
 2 any hearing commencing in the 2 calendar years succeeding
 3 the year in which the decision is rendered. The decision may
 4 contain any other provision that the district judge
 5 considers proper in determining the rights and interests of
 6 the persons involved.

7 NEW SECTION. Section 10. Judgment and decree --
 8 appellate review -- corrections. (1) A judgment and decree
 9 must be entered promptly with respect to matters that have
 10 been heard and matters in which no protest has been filed or
 11 order of rereferral entered. A judgment and decree may be
 12 confined to one matter or may include more than one matter
 13 at the discretion of the district judge. The judgment and
 14 decree must give the names of the applicants with respect to
 15 each water right involved, the location of the point of
 16 diversion or place of use, the means of diversion, the type
 17 of use, the amount and priority, and other pertinent
 18 information.

19 (2) A copy of such judgment and decree must be filed
 20 with the department, and a copy must be provided by the
 21 clerk to any person requesting it upon payment of a fee of
 22 \$1 per page, not to exceed a maximum of \$10. Promptly after
 23 receiving a judgment and decree, the department shall enter
 24 in its records the determinations therein made as to
 25 priority, location, and use of the water rights and

1 conditional water rights.

2 (3) Appellate review is allowed of the judgment and
 3 decree, or any part thereof, as in other civil actions, but
 4 no appellate review is allowed with respect to that part of
 5 the judgment and decree which confirms a ruling with respect
 6 to which no protest was filed.

7 (4) A clerical mistake in the judgment and decree may
 8 be corrected by the district judge on his own initiative or
 9 on the petition of any person, and substantive errors
 10 therein may be corrected by the district judge on the
 11 petition of any person whose rights have been adversely
 12 affected thereby and a showing satisfactory to the district
 13 judge that such person, due to mistake, inadvertence, or
 14 excusable neglect, failed to file a protest under [section
 15 7] with the clerk within the time specified in that section.
 16 A petition filed under this section must be filed with the
 17 clerk within 3 years after the date of the entry of the
 18 judgment and decree. The district judge may order notice of
 19 any such correction proceedings as he determines to be
 20 appropriate. An order of the district judge making such
 21 corrections is subject to appellate review as in other civil
 22 actions.

23 NEW SECTION. Section 11. Completion of appropriation
 24 -- certificate of water right. Upon actual application of
 25 water to the proposed beneficial use within the time

1 allowed, the applicant shall notify the district court that
 2 the appropriation has been properly completed. The district
 3 court shall order the department to inspect the
 4 appropriation. If the department determines that the
 5 appropriation has been completed in substantial accordance
 6 with the decree, it shall so report to the district court,
 7 who shall order the department to issue the applicant a
 8 certificate of water right. The original of the certificate
 9 must be sent to the applicant, and a duplicate must be kept
 10 in the office of the department in Helena.

11 NEW SECTION. Section 12. Appointment of water
 12 masters. (1) The chief justice of the supreme court may
 13 appoint one or more water masters in each judicial district
 14 to assist the district court in carrying out its duties
 15 under [sections 2 through 12].

16 (2) In appointing a water master, the chief justice
 17 shall consider a potential master's experience with water
 18 law, water use, and water rights.

19 (3) A water master shall serve at the pleasure of the
 20 chief justice and may be removed by the chief justice.

21 (4) A water master may serve in any judicial district
 22 and may be moved among the judicial districts at the
 23 discretion of the chief justice.

24 (5) The salary and expenses of a water master must be
 25 paid from the water right appropriation account established

1 in 85-2-318.

2 (6) The water master has the general powers given to a
 3 master by Rule 53(c), M.R.Civ.P.

4 Section 13. Section 85-1-101, MCA, is amended to read:
 5 "85-1-101. Policy considerations. It is hereby
 6 declared as follows:

7 (1) The general welfare of the people of Montana, in
 8 view of the state's population growth and expanding economy,
 9 requires that water resources of the state be put to optimum
 10 beneficial use and not wasted.

11 (2) The public policy of the state is to promote the
 12 conservation, development, and beneficial use of the state's
 13 water resources to secure maximum economic and social
 14 prosperity for its citizens.

15 (3) The state, in the exercise of its sovereign power,
 16 acting through the department of natural resources and
 17 conservation and the district courts, shall coordinate the
 18 development and use of the water resources of the state so
 19 as to effect full utilization, conservation, and protection
 20 of its water resources.

21 (4) The development and utilization of water resources
 22 and the efficient, economic distribution thereof are vital
 23 to the people in order to protect existing uses and to
 24 assure adequate future supplies for domestic, industrial,
 25 agricultural, and other beneficial uses.

1 (5) The water resources of the state must be protected
2 and conserved to assure adequate supplies for public
3 recreational purposes and for the conservation of wildlife
4 and aquatic life.

5 (6) The public interest requires the construction,
6 operation, and maintenance of a system of works for the
7 conservation, development, storage, distribution, and
8 utilization of water, which construction, operation, and
9 maintenance is a single object and is in all respects for
10 the welfare and benefit of the people of the state.

11 (7) It is necessary to coordinate local, state, and
12 federal water resource development and utilization plans and
13 projects through a single agency of state government, the
14 department of natural resources and conservation.

15 (8) The greatest economic benefit to the people of
16 Montana can be secured only by the sound coordination of
17 development and utilization of water resources with the
18 development and utilization of all other resources of the
19 state.

20 (9) Any attempt to gain control of or speculate on
21 large quantities of ground water of the state of Montana is
22 not in the interest of the people and is to be restricted.

23 (10) To achieve these objectives and to protect the
24 waters of Montana from diversion to other areas of the
25 nation, it is essential that a comprehensive, coordinated

1 multiple-use water resource plan be progressively
2 formulated, to be known as the "state water plan".

3 Section 14. Section 85-2-102, MCA, is amended to read:

4 "85-2-102. Definitions. Unless the context requires
5 otherwise, in this chapter the following definitions apply:

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

10 (2) "Beneficial use", unless otherwise provided, means
11 a use of water for the benefit of the appropriator, other
12 persons, or the public, including but not limited to
13 agricultural (including stock water), domestic, fish and
14 wildlife, industrial, irrigation, mining, municipal, power,
15 and recreational uses.

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

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

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

23 (6) "Department" means the department of natural
24 resources and conservation provided for in Title 2, chapter
25 15, part 33.

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

4 (8) "Finally determined" means that with respect to
5 the source of water in question:

6 (a) an order has been issued pursuant to section 13 of
7 Chapter 452, Laws of 1973; or

8 (b) a decree has been issued pursuant to 85-2-234 and
9 any appeals of the terms of the order or decree have been
10 decided and the time for filing any other appeals has
11 expired.

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

16 (10) "Permit" means the permit to appropriate issued
17 by the department under 85-2-301 through 85-2-303 and
18 85-2-306 through 85-2-314 for a source of water in which
19 existing rights have not been determined.

20 (11) "Person" means an individual, association,
21 partnership, corporation, state agency, political
22 subdivision, the United States or any agency thereof, or any
23 other entity.

24 (12) "Political subdivision" means any county,
25 incorporated city or town, public corporation, or district

1 created pursuant to state law or other public body of the
2 state empowered to appropriate water but not a private
3 corporation, association, or group.

4 (13) "Slurry" means a mixture of water and
5 insoluble material.

6 (14) "Waste" means the unreasonable loss of water
7 through the design or negligent operation of an
8 appropriation or water distribution facility or the
9 application of water to anything but a beneficial use.

10 (15) "Water" means all water of the state, surface
11 and subsurface, regardless of its character or manner of
12 occurrence, including but not limited to geothermal water,
13 diffuse surface water, and sewage effluent.

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

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

18 (18) "Water master" means a master as provided for
19 in Title 3, chapter 7, or [section 12].

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

24 Section 15. Section 85-2-112, MCA, is amended to read:

25 "85-2-112. Department duties. The department shall:

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

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

11 (3) establish and keep in its Helena office a
12 centralized record system of all existing rights and a
13 public record of permits, certificates, claims of existing
14 rights, applications, decrees issued under [section 10], and
15 other documents filed in its office under this chapter. The
16 information in this system must be made available to the
17 district court judges and water masters in proceedings under
18 [sections 5 through 8].

19 (4) cooperate with, assist, advise, and coordinate
20 plans and activities with the federal, state, and local
21 agencies and district courts pursuant to [sections 5 through
22 8] in matters relating to this chapter;

23 (5) upon request by any person, cooperate with,
24 assist, and advise that person in matters pertaining to
25 measuring water or filing claims of existing rights with a

1 district court under this chapter;

2 (6) adopt rules necessary to reject, modify, or
3 condition permit applications in highly appropriated basins
4 or subbasins as provided in 85-2-319."

5 Section 16. Section 85-2-113, MCA, is amended to read:

6 "85-2-113. Board powers and duties. (1) The board may
7 prescribe fees or service charges for any public service
8 rendered by the department under this chapter, including
9 fees for the filing of applications or for the issuance of
10 permits and certificates, for rulemaking hearings under
11 85-2-319, for administrative hearings conducted under this
12 chapter, for investigations concerning permit revocation,
13 for field verification of issued and completed permits, and
14 all change approvals. There shall be no fees for any action
15 taken by the department at the request of the water judge, a
16 water master, or the district court or for the issuance of
17 certificates of existing rights or certificates of rights
18 decreed pursuant to [section 11].

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

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

1 application for a regular permit;

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

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

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

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

20 Section 17. Section 85-2-123, MCA, is amended to read:

21 "85-2-123. Deposit of fees and penalties. Except as
22 provided in 85-2-124 and 85-2-318, all fees and penalties
23 collected under this chapter shall be deposited in the water
24 right appropriation account established in 85-2-318. All
25 penalties or fines imposed by any court for a violation of

1 this chapter shall be deposited in the general fund of the
2 county where the court presides and shall be disposed of in
3 the same manner as any other penalty or fine."

4 Section 18. Section 85-2-124, MCA, is amended to read:

5 "85-2-124. Fees for environmental impact statements.

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

21 (2) Upon notification by the department or clerk of
22 court under subsection (1), the applicant shall pay a fee
23 based upon the estimated cost of constructing, repairing, or
24 changing the appropriation and diversion facilities as
25 herein provided. The maximum fee that shall be paid to the

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

14 (3) The department and the applicant may determine by
 15 agreement the estimated cost of any facility for purposes of
 16 computing the amount of the fee to be paid to the department
 17 by the applicant. The department may contract with an
 18 applicant for:

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

23 (b) the division of responsibility between the
 24 department and an applicant for supervision over, control
 25 of, and payment for the development of information by the

1 applicant or a third party on behalf of the department and
 2 the applicant under any such contract or contracts;

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

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

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

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

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

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

6 Section 19. Section 85-2-301, MCA, is amended to read:

7 "85-2-301. Right to appropriate -- permits -- district
8 court decrees. (1) After July 1, 1973, a person may not
9 appropriate water except as provided in this chapter. A
10 person may only appropriate water for a beneficial use. A
11 right to appropriate water may not be acquired by any other
12 method, including by adverse use, adverse possession,
13 prescription, or estoppel. The method prescribed by this
14 chapter is exclusive.

15 (2) After [the effective date of this act], a person
16 may not appropriate water from a water source for which
17 water rights and priorities have been finally determined
18 except by filing for and obtaining a decree from the
19 district court pursuant to [sections 3 through 11]."

20 Section 20. Section 85-2-302, MCA, is amended to read:

21 "85-2-302. Application for permit. Except as otherwise
22 provided in [section 2] and (1) through (3) of 85-2-306, a
23 person may not appropriate water or commence construction of
24 diversion, impoundment, withdrawal, or distribution works
25 therefor except by applying for and receiving a permit from

1 the department. The application shall be made on a form
2 prescribed by the department. The department shall make the
3 forms available through its offices and the offices of the
4 county clerk and recorders. The department shall return a
5 defective application for correction or completion, together
6 with the reasons for returning it. An application does not
7 lose priority of filing because of defects if the
8 application is corrected, completed, and refiled with the
9 department within 30 days after its return to the applicant
10 or within a further time as the department may allow. If an
11 application is not corrected and completed within 30 days or
12 within a further time as the department allows, up to 3
13 months, the priority date of the application shall be the
14 date of refiled the application with the corrections with
15 the department. An application not corrected within 3 months
16 shall be terminated."

17 Section 21. Section 85-2-303, MCA, is amended to read:

18 "85-2-303. Permit for conversion of nonproductive oil
19 or gas well. A Except as provided in [section 2], a person
20 who desires to convert a nonproductive oil or gas well to a
21 water well shall file a notice of completion or apply for a
22 permit, depending on the maximum appropriation of the well,
23 as otherwise provided in this chapter. The date of
24 appropriation shall be the date of filing the notice of
25 completion or the application for a permit."

1 Section 22. Section 85-2-306, MCA, is amended to read:

2 "85-2-306. Exceptions to permit requirements. (1)
3 Outside the boundaries of a controlled groundwater area, a
4 permit or decree is not required before appropriating
5 groundwater by means of a well or developed spring with a
6 maximum appropriation of less than 100 gallons per minute.
7 Within A groundwater right from a water source for which
8 water rights have been finally determined is obtained by
9 complying with [sections 3 through 11]. A groundwater right
10 from a water source for which water rights and priorities
11 have not been finally determined is obtained by complying
12 with this section. To acquire a permit, within 60 days of
13 completion of the well or developed spring and appropriation
14 of the groundwater for beneficial use, the appropriator
15 shall file a notice of completion with the department on a
16 form provided by the department at its offices and at the
17 offices of the county clerk and recorders. Upon receipt of
18 the notice, the department shall review the notice and may,
19 before issuing a certificate of water right, return a
20 defective notice for correction or completion, together with
21 the reasons for returning it. A notice does not lose
22 priority of filing because of defects if the notice is
23 corrected, completed, and refiled with the department within
24 30 days or within a further time as the department may
25 allow, not to exceed 6 months. If a notice is not corrected

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

13 (2) An appropriator of groundwater by means of a well
14 or developed spring, first put to beneficial use between
15 January 1, 1962, and July 1, 1973, who did not file a notice
16 of completion, as required by laws in force prior to April
17 14, 1981, with the county clerk and recorder shall file a
18 notice of completion, as provided in subsection (1) of this
19 section, with the department to perfect the water right. The
20 filing of a claim of existing water right pursuant to
21 85-2-221 is sufficient notice of completion under this
22 subsection. The priority date of the appropriation shall be
23 the date of the filing of a notice as provided in subsection
24 (1) of this section or the date of the filing of the claim
25 of existing water right. An appropriation under this

1 subsection is an existing right, and a permit is not
 2 required; however, the department shall acknowledge the
 3 receipt of a correct and complete filing of a notice of
 4 completion, except that for an appropriation of less than
 5 100 gallons per minute, the department shall issue a
 6 certificate of water right.

7 (3) A permit is not required before constructing an
 8 impoundment or pit and appropriating water for use by
 9 livestock if the maximum capacity of the impoundment or pit
 10 is less than 15 acre-feet and the appropriation is less than
 11 30 acre-feet per year and is from a source other than a
 12 perennial flowing stream and the impoundment or pit is to be
 13 constructed on and will be accessible to a parcel of land
 14 that is owned or under the control of the applicant and that
 15 is 40 acres or larger. As used in this subsection, a
 16 perennial flowing stream means a stream which historically
 17 has flowed continuously at all seasons of the year, during
 18 dry as well as wet years. However, within 60 days after
 19 constructing the impoundment or pit, the appropriator shall
 20 apply for a permit as prescribed by this part. Upon receipt
 21 of a correct and complete application for a stockwater
 22 provisional permit, the department shall then automatically
 23 issue a provisional permit. If the department determines
 24 after a hearing that the rights of other appropriators have
 25 been or will be adversely affected, it may revoke the permit

1 or require the permittee to modify the impoundment or pit
 2 and may then make the permit subject to such terms,
 3 conditions, restrictions, or limitations it considers
 4 necessary to protect the rights of other appropriators.

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

8 Section 23. Section 85-2-316, MCA, is amended to read:

9 "85-2-316. Reservation of waters. (1) The state or any
 10 political subdivision or agency thereof or the United States
 11 or any agency thereof may apply to the board district court
 12 to reserve waters for existing or future beneficial uses or
 13 to maintain a minimum flow, level, or quality of water
 14 throughout the year or at such periods or for such length of
 15 time as the board court designates.

16 (2) Upon receiving an application, the department
 17 court shall proceed in accordance with 85-2-307--through
 18 85-2-309 [sections 3 through 11]. After the hearing
 19 provided in 85-2-309 [sections 7 and 8], the board court
 20 shall decide whether to reserve the water for the applicant.
 21 The department's costs of giving notice, holding the
 22 hearing, conducting investigations, and making records
 23 incurred in acting upon the application to reserve water,
 24 except the cost of salaries of the department's personnel,
 25 shall be paid by the applicant. In addition, a reasonable

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

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

8 (a) the purpose of the reservation;

9 (b) the need for the reservation;

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

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

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

19 (5) The board court shall limit any reservations after
 20 May 9, 1979, for maintenance of minimum flow, level, or
 21 quality of water that it awards at any point on a stream or
 22 river to a maximum of 50% of the average annual flow of
 23 record on gauged streams. Ungauged streams can be allocated
 24 at the discretion of the board court.

25 (6) After the adoption of an order reserving waters,

1 the department court may reject an application and refuse a
 2 permit to issue a decree for the appropriation of reserved
 3 waters or may, ~~with the approval of the board,~~ issue the
 4 permit decree subject to such terms and conditions it
 5 considers necessary for the protection of the objectives of
 6 the reservation.

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

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

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

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

1 every 5 years.

2 ~~{ii}-Nothing--in--this-section-vests-the-board-with-the~~
 3 ~~authority-to-alter-a-water-right-that-is-not-a-reservation."~~

4 Section 24. Section 85-2-317, MCA, is amended to read:
 5 "85-2-317. Limitation on appropriation of ground
 6 water. (1) After May 7, 1979, no application for a permit
 7 pursuant to 85-2-302 or for a decree pursuant to {section 3}
 8 to appropriate ground water in excess of 3,000 acre feet per
 9 year may be granted, except pursuant to an act of the
 10 legislature permitting the specific appropriation.

11 (2) Subsection (1) applies to any permit to
 12 appropriate ground water for which application has been made
 13 but which has not been granted as of May 7, 1979.

14 (3) This section does not apply to appropriations by
 15 municipalities for municipal use or to appropriations for
 16 public water supplies as defined in 75-6-102 or to
 17 appropriations for the irrigation of cropland owned and
 18 operated by the applicant.

19 (4) Any person, association, corporation, or other
 20 entity that applies for a permit to appropriate ground
 21 water, singularly or collectively, for the purpose of
 22 circumventing this section is punishable by a fine not
 23 exceeding \$5,000."

24 Section 25. Section 85-2-318, MCA, is amended to read:
 25 "85-2-318. Water right appropriation account. There is

1 established a water right appropriation account in the state
 2 special revenue fund of the state treasury. One-half of all
 3 fees collected by the district court in proceedings filed
 4 pursuant to [sections 3 through 11] must be deposited in the
 5 account. All fees collected as provided in 85-2-113 shall be
 6 deposited in the account to help pay the expenses incurred
 7 by the district courts, the supreme court, and the
 8 department for administering this part, part 1, part 4, and
 9 part 5 of chapter 2, Title 85."

10 Section 26. Section 85-2-319, MCA, is amended to read:

11 "85-2-319. Permit action in highly appropriated basins
 12 or subbasins. (1) The legislature may by law preclude permit
 13 applications, or the department may by rule reject permit
 14 applications or modify or condition permits issued in a
 15 highly appropriated basin or subbasin in which water rights
 16 and priorities have not yet been finally determined.

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

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

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

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

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

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

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

13 (c) initiate rulemaking proceedings in accordance with
 14 2-4-302 through 2-4-305.

15 (4) Title 2, chapter 4, parts 1 through 4, govern
 16 rulemaking proceedings conducted under this section, except
 17 that in addition to the notice requirements of those parts,
 18 the department notice of the rulemaking hearing must be
 19 published at least once in each week for 3 successive weeks,
 20 not less than 30 days before the date of the hearing, in a
 21 newspaper of general circulation in the county or counties
 22 in which the source is located. The department shall serve
 23 by mail a copy of the notice, not less than 30 days before
 24 the hearing, upon each person or public agency known from
 25 the examination of the records of the department to be a

1 claimant, appropriator, or permit holder of water in the
2 source."

3 Section 27. Section 85-2-401, MCA, is amended to read:

4 "85-2-401. Priority. (1) As between appropriators, the
5 first in time is the first in right. Priority of
6 appropriation does not include the right to prevent changes
7 by later appropriators in the condition of water occurrence,
8 such as the increase or decrease of streamflow or the
9 lowering of a water table, artesian pressure, or water
10 level, if the prior appropriator can reasonably exercise his
11 water right under the changed conditions.

12 (2) Priority of appropriation made under this chapter
13 dates from the filing of an application for a permit with
14 the department or, if applicable, from the filing of an
15 application for a decree pursuant to [section 3], except as
16 otherwise provided in 85-2-301 through 85-2-303, 85-2-306,
17 85-2-310(3), and 85-2-313.

18 (3) Priority of appropriation perfected before July 1,
19 1973, shall be determined as provided in part 2 of this
20 chapter."

21 Section 28. Section 85-2-402, MCA, is amended to read:

22 "85-2-402. Changes in appropriation rights. (1) An
23 appropriator may not change the place of diversion, place of
24 use, purpose of use, or place of storage except as permitted
25 under this section and approved by the department or, if

1 applicable, as ordered by the district court pursuant to
2 [section 3].

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.

25 (7) The original of a change approval issued by the

1 department must be sent to the applicant, and a duplicate
 2 must be kept in the office of the department in Helena.

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

8 Section 29. Section 85-2-403, MCA, is amended to read:
 9 "85-2-403. Transfer of appropriation right. (1) The
 10 right to use water shall pass with a conveyance of the land
 11 or transfer by operation of law, unless specifically
 12 exempted therefrom. All transfers of interests in
 13 appropriation rights shall be without loss of priority.

14 (2) Failure to comply with the provisions of
 15 85-2-402(6) or [sections 2 through 11] does not render a
 16 conveyance or reservation of a water right void, but the
 17 right may not be used until the department has approved the
 18 change. This subsection applies retroactively, within the
 19 meaning of 1-2-109, to a conveyance or reservation made
 20 after July 1, 1973."

21 Section 30. Section 85-2-508, MCA, is amended to read:
 22 "85-2-508. Controlled groundwater areas -- permits to
 23 appropriate. A person may appropriate groundwater in a
 24 controlled area only by applying for and receiving a permit
 25 from the department in accordance with part 3 of this

1 chapter or, if applicable, by filing an application in the
 2 district court for a decree pursuant to [sections 3 through
 3 11]. The department may not grant a permit if the
 4 withdrawal would be beyond the capacity of the aquifer or
 5 aquifers in the groundwater area to yield groundwater within
 6 a reasonable or feasible pumping lift (in the case of
 7 pumping developments) or within a reasonable or feasible
 8 reduction of pressure (in the case of artesian
 9 developments)."

10 Section 31. Section 85-2-509, MCA, is amended to read:

11 "85-2-509. Administrative finding of priorities. (1)
 12 The department, at its discretion, or any person claiming a
 13 right to withdraw groundwater (whether or not from a
 14 controlled area) may initiate a hearing by the department
 15 district court for the ascertainment of all existing rights
 16 to the use of the groundwater in the ground area or subarea
 17 involved. The department shall produce at the hearing a map
 18 showing and describing all the lands included in the
 19 groundwater area or subarea and copies of all data upon
 20 which any prior designation or modification order was based.
 21 The waiving or assignment of rights by mutual agreement for
 22 either temporary or extended periods shall not modify or
 23 cancel the relative priorities of the rights.

24 (2) After January 1, 1962, in a hearing for the
 25 ascertainment and finding of priorities involving rights to

1 the use of groundwaters, all appropriators of groundwater or
 2 of surface water in the particular controlled area or
 3 subarea shall be included as parties and notified in the
 4 manner provided in 85-2-506."

5 Section 32. Section 85-2-511, MCA, is amended to read:

6 "85-2-511. Scope of administrative hearing. (1) In a
 7 hearing for the ascertainment and finding of priorities to
 8 the use of groundwater, the department district court in its
 9 finding and order shall confirm, modify, alter, or amend any
 10 prior order designating and modifying the boundaries of the
 11 groundwater area or subarea involved, as the evidence
 12 justifies; shall determine the priority of rights and the
 13 quantity of groundwater to which each appropriator who is a
 14 party to the proceedings is entitled in the particular
 15 groundwater area or subarea; and shall find and determine
 16 any other matter necessary to the ascertainment of
 17 priorities of such existing rights to groundwater. It may
 18 also determine the level below which the groundwater may not
 19 be drawn by appropriators. ~~The--department--shall--act--in~~
 20 ~~administering--and--enforcing--the--order,--as--provided--in~~
 21 85-2-507:

22 (2) A copy of the order shall be recorded in the
 23 office of the clerk and recorder of each county in which the
 24 particular groundwater area or subarea is located. If the
 25 order is not appealed, the order of the department district

1 court shall be final and conclusive when it is published and
2 mailed as provided for orders issued under 85-2-507."

3 Section 33. Section 85-2-512, MCA, is amended to read:

4 "85-2-512. Investigations. (1) The department shall
5 compile information for the purpose of enabling it to comply
6 with this part and for the purpose of assisting the district
7 court in proceedings pursuant to [sections 3 through 11]. In
8 compiling this information, the department shall make use of
9 investigations, technical personnel, surveys, and
10 information available from the Montana bureau of mines and
11 geology, the United States geological survey, the board of
12 oil and gas conservation, the department of health and
13 environmental sciences, and any other private, state, or
14 governmental agency.

15 (2) In addition to the foregoing, the department may
16 request specific investigations by the preceding public
17 agencies where desired information is not otherwise
18 available."

19 NEW SECTION. Section 34. Codification instruction.
20 Sections 2 through 12 are intended to be codified as an
21 integral part of Title 85, chapter 2, part 3, and the
22 provisions of Title 85, chapter 2, part 3, apply to sections
23 2 through 12.

-End-

STATE OF MONTANA
FISCAL NOTE

REQUEST NO. FNN 321-85

Form BD-15

In compliance with a written request received February 4, 19 85, there is hereby submitted a Fiscal Note for S.B. 299 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:

Senate Bill 299 is an act to generally revise the Montana Water Use Laws to transfer from the Department of Natural Resources and Conservation to the District Courts the authority to determine water rights and priorities.

ASSUMPTIONS:

- 1) Transfer of administration to the District Courts will take 10 years.
- 2) Fees collected will not meet the costs incurred by the District Courts.
- 3) Department of Natural Resources operational costs for water adjudication will decrease 15% over the projected 10 year transition period.
- 4) One-fourth water master will be required for each judicial district at the end of 10 years.
- 5) One-fourth administrative clerk will be required in each county to assist with filing of applications for decree.
- 6) Water rights applications continue to average 4,000 per year.
- 7) Costs for DNRC for records keeping and administration remain constant at \$1,300,000 per year.

FISCAL IMPACT:

<u>Expenditures:</u>	<u>FY 86</u>	<u>FY 87</u>	<u>FY 88</u>	<u>FY 89</u>
Current Law	\$ 1,300,000	\$ 1,300,000	\$ 1,300,000	\$ 1,300,000
Proposed Law	\$ 1,331,019	\$ 1,362,028	\$ 1,393,057	\$ 1,424,076
Increased Costs to General Fund	\$ 31,019	\$ 62,028	\$ 93,057	\$ 124,076

LOCAL IMPACT:

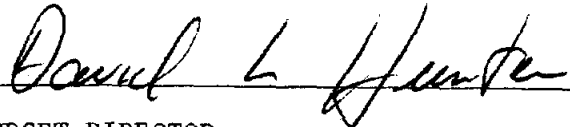
No impact on local revenues or counties if bill is funded with state general funds.

LONG RANGE EFFECTS:

Water rights administration costs will continue to rise.

TECHNICAL NOTES:

N/A



BUDGET DIRECTOR
Office of Budget and Program Planning

Date: Feb 9, 1985
SB 299