

SENATE BILL NO. 326

INTRODUCED BY HIMSL, SEVERSON, B. BROWN

IN THE SENATE

February 5, 1985	Introduced and referred to Committee on Natural Resources.
February 19, 1985	Committee recommend bill do pass as amended. Report adopted.
February 20, 1985	Bill printed and placed on members' desks.
February 21, 1985	Second reading, do pass.
February 22, 1985	Considered correctly engrossed.
February 23, 1985	Third reading, passed. Ayes, 49; Noes, 0.
	Transmitted to House.

IN THE HOUSE

February 27, 1985	Introduced and referred to Committee on Natural Resources.
March 21, 1985	Committee recommend bill be concurred in as amended. Report adopted.
March 23, 1985	Second reading, concurred in.
March 26, 1985	Third reading, concurred in.  Returned to Senate with amendments.

IN THE SENATE

March 26, 1985

Received from House.

April 2, 1985

Second reading, amendments  
concurrent in.

April 4, 1985

Third reading, amendments  
concurrent in. Ayes, 50;  
Noes, 0.

Sent to enrolling.

Reported correctly enrolled.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

SENATE BILL NO. 326  
 INTRODUCED BY Jim Sumner Bob Brown

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT GROUND WATER MAY BE APPROPRIATED ONLY BY A PERSON WHO IS EXCLUSIVE OWNER OF THE GROUND WATER DEVELOPMENT WORKS; AMENDING SECTION 85-2-306, MCA."

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

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

"85-2-306. Exceptions Appropriation of groundwater -- exceptions to permit requirements. (1) Groundwater may be appropriated only by a person who has exclusive property rights in the groundwater development works. Outside the boundaries of a controlled groundwater area, a permit is not required before appropriating groundwater by means of a well or developed spring with a maximum appropriation of less than 100 gallons per minute. Within 60 days of completion of the well or developed spring and appropriation of the groundwater for beneficial use, the appropriator shall file a notice of completion with the department on a form provided by the department at its offices and at the offices of the county clerk and recorders. Upon receipt of the notice, the department shall review the notice and may, before issuing a certificate of water right, return a

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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

(2) An appropriator of groundwater by means of a well or developed spring, first put to beneficial use between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection (1) of this section, with the department to perfect the water right. The

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

13 (3) A permit is not required before constructing an  
 14 impoundment or pit and appropriating water for use by  
 15 livestock if the maximum capacity of the impoundment or pit  
 16 is less than 15 acre-feet and the appropriation is less than  
 17 30 acre-feet per year and is from a source other than a  
 18 perennial flowing stream and the impoundment or pit is to be  
 19 constructed on and will be accessible to a parcel of land  
 20 that is owned or under the control of the applicant and that  
 21 is 40 acres or larger. As used in this subsection, a  
 22 perennial flowing stream means a stream which historically  
 23 has flowed continuously at all seasons of the year, during  
 24 dry as well as wet years. However, within 60 days after  
 25 constructing the impoundment or pit, the appropriator shall

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

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

-End-

APPROVED BY COMM. ON  
NATURAL RESOURCES

1 SENATE BILL NO. 326

2 INTRODUCED BY HIMSL, SEVERSON, B. BROWN

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT GROUND  
5 WATER MAY BE APPROPRIATED ONLY BY A PERSON WHO IS OR HAS THE  
6 CONSENT OF THE EXCLUSIVE OWNER OF THE GROUND WATER  
7 DEVELOPMENT WORKS; AMENDING SECTION 85-2-306, MCA."

8  
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

11 "85-2-306. Exceptions Appropriation of groundwater --  
12 exceptions to permit requirements. (1) Groundwater may be  
13 appropriated only by a person who has EITHER exclusive  
14 property rights in the groundwater development works OR THE  
15 WRITTEN CONSENT OF THE PERSON WITH THOSE PROPERTY RIGHTS.

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

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

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

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

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

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

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

-End-

SENATE BILL NO. 326

INTRODUCED BY HIMSL, SEVERSON, B. BROWN

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT GROUND WATER MAY BE APPROPRIATED ONLY BY A PERSON WHO IS OR HAS THE CONSENT OF THE EXCLUSIVE OWNER OF THE GROUND WATER DEVELOPMENT WORKS; AMENDING SECTION 85-2-306, MCA."

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

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

"85-2-306. Exceptions Appropriation of groundwater -- exceptions to permit requirements. (1) Groundwater may be appropriated only by a person who has EITHER exclusive property rights in the groundwater development works OR THE WRITTEN CONSENT OF THE PERSON WITH THOSE PROPERTY RIGHTS.

Outside the boundaries of a controlled groundwater area, a permit is not required before appropriating groundwater by means of a well or developed spring with a maximum appropriation of less than 100 gallons per minute. Within 60 days of completion of the well or developed spring and appropriation of the groundwater for beneficial use, the appropriator shall file a notice of completion with the department on a form provided by the department at its offices and at the offices of the county clerk and recorders. Upon receipt of the notice, the department shall

review the notice and may, before issuing a certificate of water right, return a defective notice for correction or completion, together with the reasons for returning it. A notice does not lose priority of filing because of defects if the notice is corrected, completed, and refiled with the department within 30 days or within a further time as the department may allow, not to exceed 6 months. If a notice is not corrected and completed within the time allowed, the priority date of appropriation shall be the date of refileing a correct and complete notice with the department. A certificate of water right may not be issued until a correct and complete notice has been filed with the department. The original of the certificate shall be sent to the county clerk and recorder in the county where the point of diversion or place of use is located for recordation. The department shall keep a copy of the certificate in its office in Helena. After recordation, the clerk and recorder shall send the certificate to the appropriator. The date of filing of the notice of completion is the date of priority of the right.

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



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

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

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

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

-End-



# STANDING COMMITTEE REPORT

## HOUSE

.....MARCH 20..... 1985.....

MR. SPEAKER: .....

We, your committee on..... NATURAL RESOURCES .....

having had under consideration..... SENATE BILL 326 .....

Bill No.....

THIRD reading copy ( BLUE )  
color

AN ACT PROVIDING THAT GROUND WATER MAY BE APPROPRIATED ONLY  
BY A PERSON WHO IS EXCLUSIVE OWNER OF THE GROUND WATER  
DEVELOPMENT WORKS

Respectfully report as follows: That.....SENATE BILL 326..... Bill No.....

BE AMENDED AS FOLLOWS:

- 1) Page 1, lines 11 and 12.  
Strike: "Appropriation" on line 11 through "exceptions" on  
line 12.  
Insert: "Exceptions"

AND AS AMENDED,

BE CONCURRED IN

XXXXXX  
DO PASS

*Jw 3/24*

*[Signature]*  
..... REP. BENNIS IVERSON, Chairman.....

## 1 SENATE BILL NO. 326

2 INTRODUCED BY HIMSL, SEVERSON, B. BROWN

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT GROUND  
5 WATER MAY BE APPROPRIATED ONLY BY A PERSON WHO IS OR HAS THE  
6 CONSENT OF THE EXCLUSIVE OWNER OF THE GROUND WATER  
7 DEVELOPMENT WORKS; AMENDING SECTION 85-2-306, MCA."

8  
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

11 "85-2-306. ~~Exceptions Appropriation-of-groundwater---~~  
12 ~~exceptions~~ EXCEPTIONS to permit requirements. (1)  
13 Groundwater may be appropriated only by a person who has  
14 EITHER exclusive property rights in the groundwater  
15 development works OR THE WRITTEN CONSENT OF THE PERSON WITH  
16 THOSE PROPERTY RIGHTS. Outside the boundaries of a  
17 controlled groundwater area, a permit is not required before  
18 appropriating groundwater by means of a well or developed  
19 spring with a maximum appropriation of less than 100 gallons  
20 per minute. Within 60 days of completion of the well or  
21 developed spring and appropriation of the groundwater for  
22 beneficial use, the appropriator shall file a notice of  
23 completion with the department on a form provided by the  
24 department at its offices and at the offices of the county  
25 clerk and recorders. Upon receipt of the notice, the

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

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

REFERENCE BILL

SB 326

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

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

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

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

-End-