

IN THE HOUSE

APRIL 8, 1987

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 9, 1987

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

1 House BILL NO. 642
 2 INTRODUCED BY Spaeth
 3 BY REQUEST OF THE DEPARTMENT
 4 OF NATURAL RESOURCES AND CONSERVATION

5
 6 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PERMIT AND
 7 UTILIZATION PROVISIONS OF THE WATER USE LAWS; ALTERING THE
 8 FILING AND ISSUANCE REQUIREMENTS OF A CERTIFICATE OF WATER
 9 RIGHT; REDUCING THE PUBLICATION REQUIREMENT FOR A PERMIT
 10 APPLICATION; REDEFINING A REASONABLE PERIOD OF TIME TO
 11 ESTABLISH BONA FIDE INTENT; REVISING THE PROCEDURE FOR
 12 GRANTING AN EXTENSION OF TIME FOR COMPLETING AN
 13 APPROPRIATION UNDER A PERMIT OR CHANGE AUTHORIZATION;
 14 EXPANDING AUTHORITY TO EXPEND MONEY FROM THE WATER RIGHT
 15 APPROPRIATION ACCOUNT; SUBORDINATING PRIORITY DATES OF
 16 MISSOURI RIVER BASIN RESERVATIONS IN A LIMITED CLASS OF
 17 CASES AND EXTENDING DEADLINES; REVISING THE COMPLIANCE
 18 PROVISION IN THE TRANSFER OF A WATER RIGHT; AMENDING
 19 SECTIONS 85-2-236, 85-2-306, 85-2-307, 85-2-310, 85-2-312,
 20 85-2-318, 85-2-331, 85-2-402, AND 85-2-403, MCA; REPEALING
 21 SECTION 85-2-317, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE
 22 DATE."

23
 24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 25 Section 1. Section 85-2-236, MCA, is amended to read:

1 "85-2-236. Certificate of water right. (1) When a
 2 final decree is entered, the water judge shall send a copy
 3 to the department. The Except as provided in 85-2-306, the
 4 department shall on the basis of the final decree issue a
 5 certificate of water right to each person decreed an
 6 existing right. The original of the certificate shall be
 7 sent to the person to whom the right is decreed. The
 8 department shall keep a copy of the certificate in its
 9 office in Helena.

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

15 Section 2. Section 85-2-306, MCA, is amended to read:
 16 "85-2-306. Exceptions to permit requirements. (1)
 17 Groundwater may be appropriated only by a person who has
 18 either exclusive property rights in the groundwater
 19 development works or the written consent of the person with
 20 those property rights. Outside the boundaries of a
 21 controlled groundwater area, a permit is not required before
 22 appropriating groundwater by means of a well or developed
 23 spring with a maximum appropriation of less than 100 gallons
 24 per minute. Within 60 days of completion of the well or
 25 developed spring and appropriation of the groundwater for

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

25 (2) An appropriator of groundwater by means of a well

1 or developed spring, first put to beneficial use between
 2 January 1, 1962, and July 1, 1973, who did not file a notice
 3 of completion, as required by laws in force prior to April
 4 14, 1981, with the county clerk and recorder shall file a
 5 notice of completion, as provided in subsection (1) of this
 6 section, with the department to perfect the water right. The
 7 filing of a claim of existing water right pursuant to
 8 85-2-221 is sufficient notice of completion under this
 9 subsection. The priority date of the appropriation shall be
 10 the date of the filing of a notice as provided in subsection
 11 (1) of this section or the date of the filing of the claim
 12 of existing water right. An appropriation under this
 13 subsection is an existing right, and a permit is not
 14 required; however, the department shall acknowledge the
 15 receipt of a correct and complete filing of a notice of
 16 completion, except that for an appropriation of less than
 17 100 gallons per minute, the department shall issue a
 18 certificate of water right. If a certificate is issued
 19 under this section, a certificate need not be issued under
 20 the adjudication proceedings provided for in 85-2-236.

21 (3) A permit is not required before constructing an
 22 impoundment or pit and appropriating water for use by
 23 livestock if the maximum capacity of the impoundment or pit
 24 is less than 15 acre-feet and the appropriation is less than
 25 30 acre-feet per year and is from a source other than a

1 perennial flowing stream and the impoundment or pit is to be
 2 constructed on and will be accessible to a parcel of land
 3 that is owned or under the control of the applicant and that
 4 is 40 acres or larger. As used in this subsection, a
 5 perennial flowing stream means a stream which historically
 6 has flowed continuously at all seasons of the year, during
 7 dry as well as wet years. However, within 60 days after
 8 constructing the impoundment or pit, the appropriator shall
 9 apply for a permit as prescribed by this part. Upon receipt
 10 of a correct and complete application for a stockwater
 11 provisional permit, the department shall then automatically
 12 issue a provisional permit. If the department determines
 13 after a hearing that the rights of other appropriators have
 14 been or will be adversely affected, it may revoke the permit
 15 or require the permittee to modify the impoundment or pit
 16 and may then make the permit subject to such terms,
 17 conditions, restrictions, or limitations it considers
 18 necessary to protect the rights of other appropriators.

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

22 Section 3. Section 85-2-307, MCA, is amended to read:
 23 "85-2-307. Notice of application. (1) (a) Upon receipt
 24 of a proper application for a permit, the department shall
 25 prepare a notice containing the facts pertinent to the

1 application and shall publish the notice once in a newspaper
 2 of general circulation in the area of the source ~~once-a-week~~
 3 ~~for-2-consecutive-weeks~~.

4 (b) Before the ~~last~~ date of publication, the
 5 department shall also serve the notice by first-class mail
 6 upon:

7 (i) an appropriator of water or applicant for or
 8 holder of a permit who, according to the records of the
 9 department, may be affected by the proposed appropriation;

10 (ii) any purchaser under contract for deed, as defined
 11 in 70-20-115, of property that, according to the records of
 12 the department, may be affected by the proposed
 13 appropriation; and

14 (iii) any public agency that has reserved waters in the
 15 source under 85-2-316.

16 (c) The department may, in its discretion, also serve
 17 notice upon any state agency or other person the department
 18 feels may be interested in or affected by the proposed
 19 appropriation.

20 (d) The department shall file in its records proof of
 21 service by affidavit of the publisher in the case of notice
 22 by publication and by its own affidavit in the case of
 23 service by mail.

24 (2) The notice shall state that by a date set by the
 25 department (not less than 15 days or more than 60 days after

1 the last date of publication) persons may file with the
2 department written objections to the application.

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

8 Section 4. Section 85-2-310, MCA, is amended to read:

9 "85-2-310. Action on application. (1) The department
10 shall grant, deny, or condition an application for a permit
11 in whole or in part within 120 days after the last date of
12 publication of the notice of application if no objections
13 have been received and within 180 days if a hearing is held
14 or objections have been received. However, in either case
15 the time may be extended upon agreement of the applicant,
16 or, in those cases where an environmental impact statement
17 must be prepared or in other extraordinary cases, not more
18 than 60 days upon order of the department. If the
19 department orders the time extended, it shall serve a notice
20 of the extension and the reasons therefor by certified mail
21 upon the applicant and each person who has filed an
22 objection as provided by 85-2-308.

23 (2) However, an application may not be approved in a
24 modified form or upon terms, conditions, or limitations
25 specified by the department or denied, unless the applicant

1 is first granted an opportunity to be heard. If no objection
2 is filed against the application but the department is of
3 the opinion that the application should be approved in a
4 modified form or upon terms, conditions, or limitations
5 specified by it or that the application should be denied,
6 the department shall prepare a statement of its opinion and
7 the reasons therefor. The department shall serve a statement
8 of its opinion by certified mail upon the applicant,
9 together with a notice that the applicant may obtain a
10 hearing by filing a request therefor within 30 days after
11 the notice is mailed. The notice shall further state that
12 the application will be modified in a specified manner or
13 denied, unless a hearing is requested.

14 (3) The department may cease action upon an
15 application for a permit and return it to the applicant when
16 it finds that the application is not in good faith or does
17 not show a bona fide intent to appropriate water for a
18 beneficial use. An application returned for any of these
19 reasons shall be accompanied by a statement of the reasons
20 for which it was returned, and there shall be no right to a
21 priority date based upon the filing of the application.
22 Returning an application pursuant to this subsection shall
23 be deemed a final decision of the department.

24 (4) For all applications filed after July 1, 1973, the
25 department shall find that an application is not in good

1 faith or does not show a bona fide intent to appropriate
2 water for a beneficial use if:

3 (a) an application is not corrected and completed as
4 required by 85-2-302;

5 (b) the appropriate filing fee is not paid;

6 (c) the application does not document:

7 (i) a beneficial use of water;

8 (ii) the proposed place of use of all water applied
9 for;

10 (iii) for an appropriation of 4,000 acre-feet a year or
11 more and 5.5 cubic feet per second or more, a detailed
12 project plan including, ~~but not limited to, a reasonable~~
13 ~~time-line-for-the-completion-of-the-project-and--the--actual~~
14 ~~application--of-the-water-to-a-beneficial-use, which may not~~
15 ~~exceed 10 years from the date of application, detailing~~
16 describing when and how much water will be put to a
17 beneficial use; The project plan must include a reasonable
18 time line, not to exceed 10 years from the time of issuance
19 of a permit, for the completion of the project and the
20 actual application of the water to a beneficial use.

21 (iv) for appropriations not covered in subsection
22 (4)(c)(iii), a general project plan stating when and how
23 much water will be put to a beneficial use; and

24 (v) if the water applied for is to be appropriated
25 above that which will be used solely by the applicant or if

1 it will be marketed by the applicant to other users,
2 information detailing:

3 (A) each person who will use the water and the amount
4 of water each person will use;

5 (B) the proposed place of use of all water by each
6 person;

7 (C) the nature of the relationship between the
8 applicant and each person using the water; and

9 (D) each firm contractual agreement for the specified
10 amount of water for each person using the water; or

11 (d) the appropriate environmental impact statement
12 fee, if any, is not paid as required by 85-2-124."

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

14 "85-2-312. Terms of permit. (1) The department may
15 issue a permit for less than the amount of water requested,
16 but in no case may it issue a permit for more water than is
17 requested or than can be beneficially used without waste for
18 the purpose stated in the application. The department may
19 require modification of plans and specifications for the
20 appropriation or related diversion or construction. The
21 department may issue a permit subject to terms, conditions,
22 restrictions, and limitations it considers necessary to
23 satisfy the criteria listed in 85-2-311, and it may issue
24 temporary or seasonal permits. A permit shall be issued
25 subject to existing rights and any final determination of

1 those rights made under this chapter.

2 (2) The department ~~may~~ shall specify in the permit or
 3 in any authorized extension of time provided in subsection
 4 (3), limit the time limits for commencement of the
 5 appropriation works, completion of construction, and actual
 6 application of the water to the proposed beneficial use. In
 7 fixing those time limits, the department shall consider the
 8 cost and magnitude of the project, the engineering and
 9 physical features to be encountered, and, on projects
 10 designed for gradual development and gradually increased use
 11 of water, the time reasonably necessary for that gradual
 12 development and increased use. ~~For good cause shown by the~~
 13 ~~permittee, the department may in its discretion reasonably~~
 14 ~~extend time limits.~~ The department shall issue the permit or
 15 authorized extension of time subject to the terms,
 16 conditions, restrictions, and limitations it considers
 17 necessary to ensure that the work on the appropriation is
 18 commenced, conducted, and completed and that the water is
 19 actually applied in a timely manner to the beneficial use
 20 specified in the permit.

21 (3) The department may, upon a showing of good cause,
 22 extend time limits specified in the permit for commencement
 23 of the appropriation works, completion of construction, and
 24 actual application of the water to the proposed beneficial
 25 use. All requests for extensions of time must be by

1 affidavit and must be filed with the department prior to the
 2 expiration of the time limit specified in the permit or any
 3 previously authorized extension of time. The department may
 4 issue an order temporarily extending the time limit
 5 specified in the permit for 120 days or until the department
 6 has completed its action under this section, whichever is
 7 greater. Upon receipt of a proper request for extension of
 8 time, the department shall prepare a notice containing the
 9 facts pertinent to the request for extension of time and
 10 shall publish the notice in a newspaper of general
 11 circulation in the area of the source. The department may
 12 serve notice by first-class mail upon any public agency or
 13 other person the department determines may be interested in
 14 or affected by the request for extension of time. The
 15 department shall hold a hearing on the request for extension
 16 of time on its own motion or if requested by an interested
 17 party. The department may grant the extension of time in
 18 the absence of a hearing if no requests for a hearing are
 19 received and the extension of time is granted as requested,
 20 or the department may grant the extension of time in a
 21 modified form by following the process established in
 22 85-2-310(2). Subsequent extensions of time may be made in
 23 the same manner.

24 ~~(3)~~(4) 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)~~(5) The department shall provide to the county
3 clerk and recorder of the county wherein the point of
4 diversion or place of use is located quarterly reports and
5 an annual summary report of all water right permits,
6 certificates, and change approvals issued by the department
7 within the county."

8 Section 6. Section 85-2-318, MCA, is amended to read:

9 "85-2-318. Water right appropriation account. There is
10 established a water right appropriation account in the state
11 special revenue fund of the state treasury. All fees
12 collected as provided in 85-2-113 shall be deposited in the
13 account to help pay the expenses incurred by the department
14 for administering and enforcing this part, part 1, part 4,
15 and part 5 of chapter 2, Title 85, and Title 37, chapter
16 43."

17 Section 7. Section 85-2-331, MCA, is amended to read:

18 "85-2-331. Reservations within Missouri River basin.

19 (1) The state or any agency or political subdivision thereof
20 or the United States or any agency thereof that desires to
21 apply for a reservation of water in the Missouri River basin
22 shall file an application pursuant to 85-2-316 no later than
23 July 1, ~~1989~~ 1991.

24 (2) 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, ~~1991~~ 1993, the board shall
4 make a final determination in accordance with 85-2-316 on
5 all applications filed before July 1, ~~1989~~ 1991, for
6 reservations of 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. If the
9 department issues a permit under Title 85, chapter 2, part
10 3, prior to the granting of a reservation under this
11 section, the board may subordinate the reservation to the
12 permit if it finds that the subordination does not interfere
13 substantially with the purpose of any reservation. The board
14 shall by order establish the relative priority of
15 applications approved under this section."

16 Section 8. Section 85-2-402, MCA, is amended to read:

17 "85-2-402. Changes in appropriation rights. (1) An
18 appropriator may not make a change in an appropriation right
19 except as permitted under this section and with the approval
20 of the department or, if applicable, of the legislature.

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

25 (a) The proposed use will not adversely affect the

1 water rights of other persons or other planned uses or
2 developments for which a permit has been issued or for which
3 water has been reserved.

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

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

7 (3) The department may not approve a change in purpose
8 of use or place of use of an appropriation of 4,000 or more
9 acre-feet of water a year and 5.5 or more cubic feet per
10 second of water unless the appropriator proves by
11 substantial credible evidence that:

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

13 (b) the proposed change is a reasonable use. A
14 finding of reasonable use must be based on a consideration
15 of:

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

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

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

24 (iv) the availability and feasibility of using
25 low-quality water for the purpose for which application has

1 been made;

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

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

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

12 (a) the applicant proves by clear and convincing
13 evidence and the department finds that the criteria in
14 subsections (2) and (3) are met; and

15 (b) the department then petitions the legislature and
16 the legislature affirms the decision of the department after
17 one or more public hearings.

18 (5) (a) The state of Montana has long recognized the
19 importance of conserving its public waters and the necessity
20 to maintain adequate water supplies for the state's water
21 requirements, including requirements for reserved water
22 rights held by the United States for federal reserved lands
23 and in trust for the various Indian tribes within the
24 state's boundaries. Although the state of Montana also
25 recognizes that, under appropriate conditions, the

1 out-of-state transportation and use of its public waters are
 2 not in conflict with the public welfare of its citizens or
 3 the conservation of its waters, the following criteria must
 4 be met before out-of-state use may occur:

5 (b) The department and, if applicable, the legislature
 6 may not approve a change in appropriation right for the
 7 withdrawal and transportation of appropriated water for use
 8 outside the state unless the appropriator proves by clear
 9 and convincing evidence and, if applicable, the legislature
 10 approves after one or more public hearings that:

11 (i) depending on the volume of water diverted or
 12 consumed, the applicable criteria and procedures of
 13 subsection (2) or (3) are met;

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

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

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

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

1 (ii) whether the water that is the subject of the
 2 proposed change in appropriation might feasibly be
 3 transported to alleviate water shortages within the state of
 4 Montana;

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

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

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

15 (6) For any application for a change in appropriation
 16 right involving 4,000 or more acre-feet of water a year and
 17 5.5 or more cubic feet per second of water, the department
 18 shall give notice of the proposed change in accordance with
 19 85-2-307 and shall hold one or more hearings in accordance
 20 with 85-2-309 prior to its approval or denial of the
 21 proposed change. The department shall provide notice and may
 22 hold one or more hearings upon any other proposed change if
 23 it determines that such a change might adversely affect the
 24 rights of other persons.

25 (7) The department or the legislature, if applicable,

1 may approve a change subject to such terms, conditions,
 2 restrictions, and limitations as it considers necessary to
 3 satisfy the criteria of this section, including limitations
 4 on the time for completion of the change. The department
 5 may extend time limits specified in the change approval
 6 under the applicable criteria and procedures of 85-2-312(3).

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

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

18 (10) A person holding an issued permit or change
 19 approval that has not been perfected may change the place of
 20 diversion, place of use, purpose of use, or place of storage
 21 by filing an application for change pursuant to this
 22 section.

23 (11) A change in appropriation right contrary to the
 24 provisions of this section is invalid. No officer, agent,
 25 agency, or employee of the state may knowingly permit, aid,

1 or assist in any manner such unauthorized change in
 2 appropriation right. No person or corporation may, directly
 3 or indirectly, personally or through an agent, officer, or
 4 employee, attempt to change an appropriation right except in
 5 accordance with this section."

6 Section 9. Section 85-2-403, MCA, is amended to read:

7 "85-2-403. Transfer of appropriation right. (1) The
 8 right to use water shall pass with a conveyance of the land
 9 or transfer by operation of law, unless specifically
 10 exempted therefrom. All transfers of interests in
 11 appropriation rights shall be without loss of priority.

12 (2) Failure to comply with the provisions of
 13 85-2-402(6) does not render a conveyance or reservation of a
 14 water right void, but the right may not be used until the
 15 department has approved the change. This subsection applies
 16 retroactively, within the meaning of 1-2-109, to a
 17 conveyance or reservation made after July 1, 1973."

18 NEW SECTION. Section 10. Repealer. Section 85-2-317,
 19 MCA, is repealed.

20 NEW SECTION. Section 11. Extension of authority. Any
 21 existing authority of the board of natural resources and
 22 conservation to make rules on the subject of the provisions
 23 of this act is extended to the provisions of this act.

24 NEW SECTION. Section 12. Effective date. This act is
 25 effective on passage and approval.

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB642, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act revising the permit and utilization provisions of the water use laws; altering the filing and issuance requirements of a certificate of water right; reducing the publication requirement for a permit application; redefining a reasonable period of time to establish bona fide intent; revising the procedure for granting an extension of time for completing an appropriation under a permit or change authorization; expanding authority to expend money from the water right appropriation account; subordinating priority dates of Missouri River Basin Reservations in a limited class of cases and extending deadlines; revising the compliance provision in the transfer of a water right; amending Sections 85-2-236, 85-2-306, 85-2-307, 85-2-310, 85-2-312, 85-2-318, 85-2-331, 85-2-402, and 85-2-403, MCA; repealing Section 85-2-317, MCA; and providing an immediate effective date.

ASSUMPTIONS:

1. Amending Section 85-2-307 will reduce notice from two publications to one publication.
2. Amending Section 85-2-312 and 85-2-402 will require newspaper publication, individual noticing and hearings for extension of time requests.
3. The Board of Natural Resources and Conservation will adopt fee rules under 85-2-312 and 85-2-402 to collect direct costs for publishing extension of time requests.

FISCAL IMPACT:

	FY88			FY89		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
<u>Expenditures:</u>						
Operating Costs	\$ 433,677	\$ 445,762	\$ 12,085	\$ 433,677	\$ 445,917	\$ 12,240
<u>Funding:</u>						
General Fund	\$ 433,677	\$ 433,682	\$ 205	\$ 433,677	\$ 434,037	\$ 360
State Special			\$ 11,880			\$ 11,880
<u>Revenues:</u>						
State Special	\$ 75,000	\$ 86,880	\$ 11,880	\$ 75,000	\$ 86,880	\$ 11,880

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

If the Board of Natural Resources raises fees from \$10 to \$15 under Section 85-2-318 for Notices of Completion, approximately \$10,000 in FY88 and \$10,000 in FY89 would be raised.

TECHNICAL OR MECHANICAL DEFECTS IN PROPOSED LEGISLATION OR CONFLICTS WITH EXISTING LEGISLATION:

Publication costs should be passed on to the permittee to prevent a conflict of notice reimbursement costs.

David L. Hunter DATE 2/16/87
DAVID L. HUNTER, BUDGET DIRECTOR
Office of Budget and Program Planning

Gary Spaeth DATE 17 Feb 87
GARY SPAETH, PRIMARY SPONSOR

Fiscal Note for HB642, as introduced.

HB 642

APPROVED BY COMM. ON
NATURAL RESOURCES

1 HOUSE BILL NO. 642
2 INTRODUCED BY SPAETH
3 BY REQUEST OF THE DEPARTMENT
4 OF NATURAL RESOURCES AND CONSERVATION
5

6 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PERMIT AND
7 UTILIZATION PROVISIONS OF THE WATER USE LAWS; ALTERING THE
8 FILING AND ISSUANCE REQUIREMENTS OF A CERTIFICATE OF WATER
9 RIGHT; REDUCING THE PUBLICATION REQUIREMENT FOR A PERMIT
10 APPLICATION; REDEFINING A REASONABLE PERIOD OF TIME TO
11 ESTABLISH BONA FIDE INTENT; REVISING THE PROCEDURE FOR
12 GRANTING AN EXTENSION OF TIME FOR COMPLETING AN
13 APPROPRIATION UNDER A PERMIT OR CHANGE AUTHORIZATION;
14 EXPANDING AUTHORITY TO EXPEND MONEY FROM THE WATER RIGHT
15 APPROPRIATION ACCOUNT; SUBORDINATING PRIORITY DATES OF
16 MISSOURI RIVER BASIN RESERVATIONS IN A LIMITED CLASS OF
17 CASES AND EXTENDING DEADLINES FOR RESERVATIONS BELOW FORT
18 PECK DAM; REVISING THE COMPLIANCE PROVISION IN THE TRANSFER
19 OF A WATER RIGHT; AMENDING SECTIONS 85-2-236, 85-2-306,
20 85-2-307, 85-2-310, 85-2-312, 85-2-318, 85-2-331, 85-2-402,
21 AND 85-2-403, MCA; ~~REPEALING SECTION 85-2-317, MCA;~~ AND
22 PROVIDING AN IMMEDIATE EFFECTIVE DATE."
23

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

25 Section 1. Section 85-2-236, MCA, is amended to read:

1 "85-2-236. Certificate of water right. (1) When a
2 final decree is entered, the water judge shall send a copy
3 to the department. The Except as provided in 85-2-306, the
4 department shall on the basis of the final decree issue a
5 certificate of water right to each person decreed an
6 existing right. The original of the certificate shall be
7 sent to the person to whom the right is decreed. The
8 department shall keep a copy of the certificate in its
9 office in Helena.

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

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

16 "85-2-306. Exceptions to permit requirements. (1)
17 Groundwater may be appropriated only by a person who has
18 either exclusive property rights in the groundwater
19 development works or the written consent of the person with
20 those property rights. Outside the boundaries of a
21 controlled groundwater area, a permit is not required before
22 appropriating groundwater by means of a well or developed
23 spring with a maximum appropriation of less than 100 gallons
24 per minute. Within 60 days of completion of the well or
25 developed spring and appropriation of the groundwater for

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

25 (2) An appropriator of groundwater by means of a well

1 or developed spring, first put to beneficial use between
 2 January 1, 1962, and July 1, 1973, who did not file a notice
 3 of completion, as required by laws in force prior to April
 4 14, 1981, with the county clerk and recorder shall file a
 5 notice of completion, as provided in subsection (1) of this
 6 section, with the department to perfect the water right. The
 7 filing of a claim of existing water right pursuant to
 8 85-2-221 is sufficient notice of completion under this
 9 subsection. The priority date of the appropriation shall be
 10 the date of the filing of a notice as provided in subsection
 11 (1) of this section or the date of the filing of the claim
 12 of existing water right. An appropriation under this
 13 subsection is an existing right, and a permit is not
 14 required; however, the department shall acknowledge the
 15 receipt of a correct and complete filing of a notice of
 16 completion, except that for an appropriation of less than
 17 100 gallons per minute, the department shall issue a
 18 certificate of water right. If a certificate is issued
 19 under this section, a certificate need not be issued under
 20 the adjudication proceedings provided for in 85-2-236.

21 (3) A permit is not required before constructing an
 22 impoundment or pit and appropriating water for use by
 23 livestock if the maximum capacity of the impoundment or pit
 24 is less than 15 acre-feet and the appropriation is less than
 25 30 acre-feet per year and is from a source other than a

1 perennial flowing stream and the impoundment or pit is to be
 2 constructed on and will be accessible to a parcel of land
 3 that is owned or under the control of the applicant and that
 4 is 40 acres or larger. As used in this subsection, a
 5 perennial flowing stream means a stream which historically
 6 has flowed continuously at all seasons of the year, during
 7 dry as well as wet years. However, within 60 days after
 8 constructing the impoundment or pit, the appropriator shall
 9 apply for a permit as prescribed by this part. Upon receipt
 10 of a correct and complete application for a stockwater
 11 provisional permit, the department shall then automatically
 12 issue a provisional permit. If the department determines
 13 after a hearing that the rights of other appropriators have
 14 been or will be adversely affected, it may revoke the permit
 15 or require the permittee to modify the impoundment or pit
 16 and may then make the permit subject to such terms,
 17 conditions, restrictions, or limitations it considers
 18 necessary to protect the rights of other appropriators.

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

22 Section 3. Section 85-2-307, MCA, is amended to read:

23 "85-2-307. Notice of application. (1) (a) Upon receipt
 24 of a proper application for a permit, the department shall
 25 prepare a notice containing the facts pertinent to the

1 application and shall publish the notice once in a newspaper
 2 of general circulation in the area of the source ~~once-a-week~~
 3 ~~for-2-consecutive-weeks~~.

4 (b) Before the ~~last~~ date of publication, the
 5 department shall also serve the notice by first-class mail
 6 upon:

7 (i) an appropriator of water or applicant for or
 8 holder of a permit who, according to the records of the
 9 department, may be affected by the proposed appropriation;

10 (ii) any purchaser under contract for deed, as defined
 11 in 70-20-115, of property that, according to the records of
 12 the department, may be affected by the proposed
 13 appropriation; and

14 (iii) any public agency that has reserved waters in the
 15 source under 85-2-316.

16 (c) The department may, in its discretion, also serve
 17 notice upon any state agency or other person the department
 18 feels may be interested in or affected by the proposed
 19 appropriation.

20 (d) The department shall file in its records proof of
 21 service by affidavit of the publisher in the case of notice
 22 by publication and by its own affidavit in the case of
 23 service by mail.

24 (2) The notice shall state that by a date set by the
 25 department (not less than 15 days or more than 60 days after

1 the last date of publication) persons may file with the
2 department written objections to the application.

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

8 Section 4. Section 85-2-310, MCA, is amended to read:

9 "85-2-310. Action on application. (1) The department
10 shall grant, deny, or condition an application for a permit
11 in whole or in part within 120 days after the last date of
12 publication of the notice of application if no objections
13 have been received and within 180 days if a hearing is held
14 or objections have been received. However, in either case
15 the time may be extended upon agreement of the applicant,
16 or, in those cases where an environmental impact statement
17 must be prepared or in other extraordinary cases, not more
18 than 60 days upon order of the department. If the
19 department orders the time extended, it shall serve a notice
20 of the extension and the reasons therefor by certified mail
21 upon the applicant and each person who has filed an
22 objection as provided by 85-2-308.

23 (2) However, an application may not be approved in a
24 modified form or upon terms, conditions, or limitations
25 specified by the department or denied, unless the applicant

1 is first granted an opportunity to be heard. If no objection
2 is filed against the application but the department is of
3 the opinion that the application should be approved in a
4 modified form or upon terms, conditions, or limitations
5 specified by it or that the application should be denied,
6 the department shall prepare a statement of its opinion and
7 the reasons therefor. The department shall serve a statement
8 of its opinion by certified mail upon the applicant,
9 together with a notice that the applicant may obtain a
10 hearing by filing a request therefor within 30 days after
11 the notice is mailed. The notice shall further state that
12 the application will be modified in a specified manner or
13 denied, unless a hearing is requested.

14 (3) The department may cease action upon an
15 application for a permit and return it to the applicant when
16 it finds that the application is not in good faith or does
17 not show a bona fide intent to appropriate water for a
18 beneficial use. An application returned for any of these
19 reasons shall be accompanied by a statement of the reasons
20 for which it was returned, and there shall be no right to a
21 priority date based upon the filing of the application.
22 Returning an application pursuant to this subsection shall
23 be deemed a final decision of the department.

24 (4) For all applications filed after July 1, 1973, the
25 department shall find that an application is not in good

1 faith or does not show a bona fide intent to appropriate
2 water for a beneficial use if:

3 (a) an application is not corrected and completed as
4 required by 85-2-302;

5 (b) the appropriate filing fee is not paid;

6 (c) the application does not document:

7 (i) a beneficial use of water;

8 (ii) the proposed place of use of all water applied
9 for;

10 (iii) for an appropriation of 4,000 acre-feet a year or
11 more and 5.5 cubic feet per second or more, a detailed
12 project plan including, ~~but not limited to, a reasonable~~
13 ~~time line for the completion of the project and the actual~~
14 ~~application of the water to a beneficial use, which may not~~
15 ~~exceed 10 years from the date of application, detailing~~
16 describing when and how much water will be put to a
17 beneficial use. The project plan must include a reasonable
18 time line, not to exceed 10 years from the time of issuance
19 of a permit, for the completion of the project and the
20 actual application of the water to a beneficial use.

21 (iv) for appropriations not covered in subsection
22 (4)(c)(iii), a general project plan stating when and how
23 much water will be put to a beneficial use; and

24 (v) if the water applied for is to be appropriated
25 above that which will be used solely by the applicant or if

1 it will be marketed by the applicant to other users,
2 information detailing:

3 (A) each person who will use the water and the amount
4 of water each person will use;

5 (B) the proposed place of use of all water by each
6 person;

7 (C) the nature of the relationship between the
8 applicant and each person using the water; and

9 (D) each firm contractual agreement for the specified
10 amount of water for each person using the water; or

11 (d) the appropriate environmental impact statement
12 fee, if any, is not paid as required by 85-2-124."

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

14 "85-2-312. Terms of permit. (1) The department may
15 issue a permit for less than the amount of water requested,
16 but in no case may it issue a permit for more water than is
17 requested or than can be beneficially used without waste for
18 the purpose stated in the application. The department may
19 require modification of plans and specifications for the
20 appropriation or related diversion or construction. The
21 department may issue a permit subject to terms, conditions,
22 restrictions, and limitations it considers necessary to
23 satisfy the criteria listed in 85-2-311, and it may issue
24 temporary or seasonal permits. A permit shall be issued
25 subject to existing rights and any final determination of

1 those rights made under this chapter.

2 (2) The department ~~may~~ shall specify in the permit or
 3 in any authorized extension of time provided in subsection
 4 (3), limit the time limits for commencement of the
 5 appropriation works, completion of construction, and actual
 6 application of the water to the proposed beneficial use. In
 7 fixing those time limits, the department shall consider the
 8 cost and magnitude of the project, the engineering and
 9 physical features to be encountered, and, on projects
 10 designed for gradual development and gradually increased use
 11 of water, the time reasonably necessary for that gradual
 12 development and increased use. For good cause shown by the
 13 permittee, the department may in its discretion reasonably
 14 extend time limits. The department shall issue the permit or
 15 authorized extension of time subject to the terms,
 16 conditions, restrictions, and limitations it considers
 17 necessary to ensure that the work on the appropriation is
 18 commenced, conducted, and completed and that the water is
 19 actually applied in a timely manner to the beneficial use
 20 specified in the permit.

21 (3) The department may, upon a showing of good cause,
 22 extend time limits specified in the permit for commencement
 23 of the appropriation works, completion of construction, and
 24 actual application of the water to the proposed beneficial
 25 use. All requests for extensions of time must be by

1 affidavit and must be filed with the department prior to the
 2 expiration of the time limit specified in the permit or any
 3 previously authorized extension of time. The department may
 4 issue an order temporarily extending the time limit
 5 specified in the permit for 120 days or until the department
 6 has completed its action under this section, whichever is
 7 greater. Upon receipt of a proper request for extension of
 8 time, the department shall prepare a notice containing the
 9 facts pertinent to the request for extension of time and
 10 shall publish the notice in a newspaper of general
 11 circulation in the area of the source. The department may
 12 serve notice by first-class mail upon any public agency or
 13 other person the department determines may be interested in
 14 or affected by the request for extension of time. The
 15 department shall hold a hearing on the request for extension
 16 of time on its own motion or if requested by an interested
 17 party. The department may grant the extension of time in
 18 the absence of a hearing if no requests for a hearing are
 19 received and the extension of time is granted as requested,
 20 or the department may grant the extension of time in a
 21 modified form by following the process established in
 22 85-2-310(2). Subsequent extensions of time may be made in
 23 the same manner.

24 (3)(4) 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)~~(5) The department shall provide to the county
3 clerk and recorder of the county wherein the point of
4 diversion or place of use is located quarterly reports and
5 an annual summary report of all water right permits,
6 certificates, and change approvals issued by the department
7 within the county."

8 Section 6. Section 85-2-318, MCA, is amended to read:
9 "85-2-318. Water right appropriation account. There is
10 established a water right appropriation account in the state
11 special revenue fund of the state treasury. All fees
12 collected as provided in 85-2-113 shall be deposited in the
13 account to help pay the expenses incurred by the department
14 for administering and enforcing this part, part 1, part 4,
15 and part 5 of chapter 2, Title 85, and Title 37, chapter
16 43."

17 Section 7. Section 85-2-331, MCA, is amended to read:
18 "85-2-331. Reservations within Missouri River basin.
19 (1) The state or any agency or political subdivision thereof
20 or the United States or any agency thereof that desires to
21 apply for a reservation of water in the Missouri River basin
22 shall file an application pursuant to 85-2-316 no later than
23 July 1, 1989 ~~1991~~ 1989, EXCEPT THAT APPLICATIONS FOR
24 RESERVATION OF WATER BELOW FORT PECK DAM MUST BE FILED NO
25 LATER THAN JULY 1, 1991.

1 (2) Subject to legislative appropriation, the
2 department shall provide technical and financial assistance
3 to other state agencies and political subdivisions in
4 applying for reservations within the Missouri River basin.

5 (3) (A) Before December 31, ~~1991~~ ~~1993~~ 1991, the board
6 shall make a final determination in accordance with 85-2-316
7 on all applications filed before July 1, 1989 ~~1991~~ 1989, for
8 reservations of water in the Missouri River basin ABOVE FORT
9 PECK DAM.

10 (B) BEFORE DECEMBER 31, 1993, THE BOARD SHALL MAKE A
11 FINAL DETERMINATION IN ACCORDANCE WITH 85-2-316 ON ALL
12 APPLICATIONS FILED BEFORE JULY 1, 1991, FOR RESERVATIONS OF
13 WATER IN THE MISSOURI RIVER BASIN BELOW FORT PECK DAM.

14 (C) THE BOARD SHALL DETERMINE WHICH APPLICATIONS OR
15 PORTIONS OF APPLICATIONS ARE CONSIDERED TO BE ABOVE OR BELOW
16 FORT PECK DAM.

17 (4) Water reservations approved by the board under
18 this section have a priority date of July 1, 1985. If the
19 department issues a permit under Title 85, chapter 2, part
20 3, prior to the granting of a reservation under this
21 section, the board may subordinate the reservation to the
22 permit if it finds that the subordination does not interfere
23 substantially with the purpose of any reservation. The board
24 shall by order establish the relative priority of
25 applications approved under this section."

1 Section 8. Section 85-2-402, MCA, is amended to read:
 2 "85-2-402. Changes in appropriation rights. (1) An
 3 appropriator may not make a change in an appropriation right
 4 except as permitted under this section and with the approval
 5 of the department or, if applicable, of the legislature:
 6 (2) Except as provided in subsections (3) through (5),
 7 the department shall approve a change in appropriation right
 8 if the appropriator proves by substantial credible evidence
 9 that the following criteria are met:
 10 (a) The proposed use will not adversely affect the
 11 water rights of other persons or other planned uses or
 12 developments for which a permit has been issued or for which
 13 water has been reserved.
 14 (b) The proposed means of diversion, construction, and
 15 operation of the appropriation works are adequate.
 16 (c) The proposed use of water is a beneficial use.
 17 (3) The department may not approve a change in purpose
 18 of use or place of use of an appropriation of 4,000 or more
 19 acre-feet of water a year and 5.5 or more cubic feet per
 20 second of water unless the appropriator proves by
 21 substantial credible evidence that:
 22 (a) the criteria in subsection (2) are met;
 23 (b) the proposed change is a reasonable use. A
 24 finding of reasonable use must be based on a consideration
 25 of:

1 (i) the existing demands on the state water supply, as
 2 well as projected demands of water for future beneficial
 3 purposes, including municipal water supplies, irrigation
 4 systems, and minimum streamflows for the protection of
 5 existing water rights and aquatic life;
 6 (ii) the benefits to the applicant and the state;
 7 (iii) the effects on the quantity and quality of water
 8 for existing uses in the source of supply;
 9 (iv) the availability and feasibility of using
 10 low-quality water for the purpose for which application has
 11 been made;
 12 (v) the effects on private property rights by any
 13 creation of or contribution to saline seep; and
 14 (vi) the probable significant adverse environmental
 15 impacts of the proposed use of water as determined by the
 16 department pursuant to Title 75, chapter 1, or Title 75,
 17 chapter 20.
 18 (4) The department may not approve a change in purpose
 19 of use or place of use for a diversion that results in 4,000
 20 or more acre-feet of water a year and 5.5 or more cubic feet
 21 per second of water being consumed unless:
 22 (a) the applicant proves by clear and convincing
 23 evidence and the department finds that the criteria in
 24 subsections (2) and (3) are met; and
 25 (b) the department then petitions the legislature and

1 the legislature affirms the decision of the department after
2 one or more public hearings.

3 (5) (a) The state of Montana has long recognized the
4 importance of conserving its public waters and the necessity
5 to maintain adequate water supplies for the state's water
6 requirements, including requirements for reserved water
7 rights held by the United States for federal reserved lands
8 and in trust for the various Indian tribes within the
9 state's boundaries. Although the state of Montana also
10 recognizes that, under appropriate conditions, the
11 out-of-state transportation and use of its public waters are
12 not in conflict with the public welfare of its citizens or
13 the conservation of its waters, the following criteria must
14 be met before out-of-state use may occur:

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

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

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

1 (iii) the proposed out-of-state use of water is not
2 otherwise detrimental to the public welfare of the citizens
3 of Montana.

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

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

11 (ii) whether the water that is the subject of the
12 proposed change in appropriation might feasibly be
13 transported to alleviate water shortages within the state of
14 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 change in appropriation right
21 to withdraw and transport water for use outside the state,
22 the applicant shall submit to and comply with the laws of
23 the state of Montana governing the appropriation and use of
24 water.

25 (6) For any application for a change in appropriation

1 right involving 4,000 or more acre-feet of water a year and
 2 5.5 or more cubic feet per second of water, the department
 3 shall give notice of the proposed change in accordance with
 4 85-2-307 and shall hold one or more hearings in accordance
 5 with 85-2-309 prior to its approval or denial of the
 6 proposed change. The department shall provide notice and may
 7 hold one or more hearings upon any other proposed change if
 8 it determines that such a change might adversely affect the
 9 rights of other persons.

10 (7) The department or the legislature, if applicable,
 11 may approve a change subject to such terms, conditions,
 12 restrictions, and limitations as it considers necessary to
 13 satisfy the criteria of this section, including limitations
 14 on the time for completion of the change. The department
 15 may extend time limits specified in the change approval
 16 under the applicable criteria and procedures of 85-2-312(3).

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

25 (9) 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 (10) 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 (11) A change in appropriation right contrary to the
 9 provisions of this section is invalid. No officer, agent,
 10 agency, or employee of the state may knowingly permit, aid,
 11 or assist in any manner such unauthorized change in
 12 appropriation right. No person or corporation may, directly
 13 or indirectly, personally or through an agent, officer, or
 14 employee, attempt to change an appropriation right except in
 15 accordance with this section."

16 Section 9. Section 85-2-403, MCA, is amended to read:

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

22 (2) Failure to comply with the provisions of
 23 85-2-402(6) does not render a conveyance or reservation of a
 24 water right void, but the right may not be used until the
 25 department has approved the change. This subsection applies

1 retroactively, within the meaning of 1-2-109, to a
2 conveyance or reservation made after July 1, 1973."

3 ~~NEW SECTION. Section 10. Repealer. Section 85-2-317,~~
4 ~~MCA, is repealed.~~

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

9 NEW SECTION. Section 11. Effective date. This act is
10 effective on passage and approval.

-End-

1 HOUSE BILL NO. 642
 2 INTRODUCED BY SPAETH
 3 BY REQUEST OF THE DEPARTMENT
 4 OF NATURAL RESOURCES AND CONSERVATION
 5
 6 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PERMIT AND
 7 UTILIZATION PROVISIONS OF THE WATER USE LAWS; ALTERING THE
 8 FILING AND ISSUANCE REQUIREMENTS OF A CERTIFICATE OF WATER
 9 RIGHT; REDUCING THE PUBLICATION REQUIREMENT FOR A PERMIT
 10 APPLICATION; REDEFINING A REASONABLE PERIOD OF TIME TO
 11 ESTABLISH BONA FIDE INTENT; REVISING THE PROCEDURE FOR
 12 GRANTING AN EXTENSION OF TIME FOR COMPLETING AN
 13 APPROPRIATION UNDER A PERMIT OR CHANGE AUTHORIZATION;
 14 EXPANDING AUTHORITY TO EXPEND MONEY FROM THE WATER RIGHT
 15 APPROPRIATION ACCOUNT; SUBORDINATING PRIORITY DATES OF
 16 MISSOURI RIVER BASIN RESERVATIONS IN A LIMITED CLASS OF
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 21 AND 85-2-403, MCA; ~~REPEALING--SECTION--85-2-317,--MCA;~~ AND
 22 PROVIDING AN IMMEDIATE EFFECTIVE DATE."
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 24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
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 2 final decree is entered, the water judge shall send a copy
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 6 existing right. The original of the certificate shall be
 7 sent to the person to whom the right is decreed. The
 8 department shall keep a copy of the certificate in its
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10 (2) The department shall provide to the county clerk
 11 and recorder of the county wherein the point of diversion or
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 19 development works or the written consent of the person with
 20 those property rights. Outside the boundaries of a
 21 controlled groundwater area, a permit is not required before
 22 appropriating groundwater by means of a well or developed
 23 spring with a maximum appropriation of less than 100 gallons
 24 per minute, EXCEPT THAT A COMBINED APPROPRIATION FROM TWO OR
 25 MORE WELLS OR DEVELOPED SPRINGS EXCEEDING THIS LIMITATION

1 REQUIRES A PERMIT. Within 60 days of completion of the well
 2 or developed spring and appropriation of the groundwater for
 3 beneficial use, the appropriator shall file a notice of
 4 completion with the department on a form provided by the
 5 department at its offices and at the offices of the county
 6 clerk and recorders. Upon receipt of the notice, the
 7 department shall review the notice and may, before issuing a
 8 certificate of water right, return a defective notice for
 9 correction or completion, together with the reasons for
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 12 and refiled with the department within 30 days or within a
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 15 the time allowed, the priority date of appropriation shall
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 18 issued until a correct and complete notice has been filed
 19 with the department. The original of the certificate shall
 20 be sent to the county-clerk-and-recorder-in-the-county-where
 21 the-point-of-diversion-or-place-of-use-is-located-for
 22 recordation appropriator. The department shall keep a copy
 23 of the certificate in its office in Helena. After
 24 recordation,---the---clerk---and---recorder---shall---send---the
 25 certificate-to-the-appropriator. The date of filing of the

1 notice of completion is the date of priority of the right.

2 (2) An appropriator of groundwater by means of a well
 3 or developed spring, first put to beneficial use between
 4 January 1, 1962, and July 1, 1973, who did not file a notice
 5 of completion, as required by laws in force prior to April
 6 14, 1981, with the county clerk and recorder shall file a
 7 notice of completion, as provided in subsection (1) of this
 8 section, with the department to perfect the water right. The
 9 filing of a claim of existing water right pursuant to
 10 85-2-221 is sufficient notice of completion under this
 11 subsection. The priority date of the appropriation shall be
 12 the date of the filing of a notice as provided in subsection
 13 (1) of this section or the date of the filing of the claim
 14 of existing water right. An appropriation under this
 15 subsection is an existing right, and a permit is not
 16 required; however, the department shall acknowledge the
 17 receipt of a correct and complete filing of a notice of
 18 completion, except that for an appropriation of less than
 19 100 gallons per minute, the department shall issue a
 20 certificate of water right. If a certificate is issued
 21 under this section, a certificate need not be issued under
 22 the adjudication proceedings provided for in 85-2-236.

23 (3) A permit is not required before constructing an
 24 impoundment or pit and appropriating water for use by
 25 livestock if the maximum capacity of the impoundment or pit

1 is less than 15 acre-feet and the appropriation is less than
 2 30 acre-feet per year and is from a source other than a
 3 perennial flowing stream and the impoundment or pit is to be
 4 constructed on and will be accessible to a parcel of land
 5 that is owned or under the control of the applicant and that
 6 is 40 acres or larger. As used in this subsection, a
 7 perennial flowing stream means a stream which historically
 8 has flowed continuously at all seasons of the year, during
 9 dry as well as wet years. However, within 60 days after
 10 constructing the impoundment or pit, the appropriator shall
 11 apply for a permit as prescribed by this part. Upon receipt
 12 of a correct and complete application for a stockwater
 13 provisional permit, the department shall then automatically
 14 issue a provisional permit. If the department determines
 15 after a hearing that the rights of other appropriators have
 16 been or will be adversely affected, it may revoke the permit
 17 or require the permittee to modify the impoundment or pit
 18 and may then make the permit subject to such terms,
 19 conditions, restrictions, or limitations it considers
 20 necessary to protect the rights of other appropriators.

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

24 Section 3. Section 85-2-307, MCA, is amended to read:
 25 "85-2-307. Notice of application. (1) (a) Upon receipt

1 of a proper application for a permit, the department shall
 2 prepare a notice containing the facts pertinent to the
 3 application and shall publish the notice once in a newspaper
 4 of general circulation in the area of the source once-a-week
 5 for-2-consecutive-weeks.

6 (b) Before the last date of publication, the
 7 department shall also serve the notice by first-class mail
 8 upon:

9 (i) an appropriator of water or applicant for or
 10 holder of a permit who, according to the records of the
 11 department, may be affected by the proposed appropriation;

12 (ii) any purchaser under contract for deed, as defined
 13 in 70-20-115, of property that, according to the records of
 14 the department, may be affected by the proposed
 15 appropriation; and

16 (iii) any public agency that has reserved waters in the
 17 source under 85-2-316.

18 (c) The department may, in its discretion, also serve
 19 notice upon any state agency or other person the department
 20 feels may be interested in or affected by the proposed
 21 appropriation.

22 (d) The department shall file in its records proof of
 23 service by affidavit of the publisher in the case of notice
 24 by publication and by its own affidavit in the case of
 25 service by mail.

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

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

10 Section 4. Section 85-2-310, MCA, is amended to read:

11 "85-2-310. Action on application. (1) The department
12 shall grant, deny, or condition an application for a permit
13 in whole or in part within 120 days after the last date of
14 publication of the notice of application if no objections
15 have been received and within 180 days if a hearing is held
16 or objections have been received. However, in either case
17 the time may be extended upon agreement of the applicant,
18 or, in those cases where an environmental impact statement
19 must be prepared or in other extraordinary cases, not more
20 than 60 days upon order of the department. If the
21 department orders the time extended, it shall serve a notice
22 of the extension and the reasons therefor by certified mail
23 upon the applicant and each person who has filed an
24 objection as provided by 85-2-308.

25 (2) However, an application may not be approved in a

1 modified form or upon terms, conditions, or limitations
2 specified by the department or denied, unless the applicant
3 is first granted an opportunity to be heard. If no objection
4 is filed against the application but the department is of
5 the opinion that the application should be approved in a
6 modified form or upon terms, conditions, or limitations
7 specified by it or that the application should be denied,
8 the department shall prepare a statement of its opinion and
9 the reasons therefor. The department shall serve a statement
10 of its opinion by certified mail upon the applicant,
11 together with a notice that the applicant may obtain a
12 hearing by filing a request therefor within 30 days after
13 the notice is mailed. The notice shall further state that
14 the application will be modified in a specified manner or
15 denied, unless a hearing is requested.

16 (3) The department may cease action upon an
17 application for a permit and return it to the applicant when
18 it finds that the application is not in good faith or does
19 not show a bona fide intent to appropriate water for a
20 beneficial use. An application returned for any of these
21 reasons shall be accompanied by a statement of the reasons
22 for which it was returned, and there shall be no right to a
23 priority date based upon the filing of the application.
24 Returning an application pursuant to this subsection shall
25 be deemed a final decision of the department.

1 (4) For all applications filed after July 1, 1973, the
 2 department shall find that an application is not in good
 3 faith or does not show a bona fide intent to appropriate
 4 water for a beneficial use if:

5 (a) an application is not corrected and completed as
 6 required by 85-2-302;

7 (b) the appropriate filing fee is not paid;

8 (c) the application does not document:

9 (i) a beneficial use of water;

10 (ii) the proposed place of use of all water applied
 11 for;

12 (iii) for an appropriation of 4,000 acre-feet a year or
 13 more and 5.5 cubic feet per second or more, a detailed
 14 project plan ~~including,--but--not--limited--to--a--reasonable~~
 15 ~~time--line--for--the--completion--of--the--project--and--the--actual~~
 16 ~~application--of--the--water--to--a--beneficial--use,--which--may--not~~
 17 ~~exceed--10--years--from--the--date--of--application,--detailing~~
 18 describing when and how much water will be put to a
 19 beneficial use. The project plan must include a reasonable
 20 time line, not to exceed 10 years from the time of issuance
 21 of a permit, for the completion of the project and the
 22 actual application of the water to a beneficial use.

23 (iv) for appropriations not covered in subsection
 24 (4)(c)(iii), a general project plan stating when and how
 25 much water will be put to a beneficial use; and

1 (v) if the water applied for is to be appropriated
 2 above that which will be used solely by the applicant or if
 3 it will be marketed by the applicant to other users,
 4 information detailing:

5 (A) each person who will use the water and the amount
 6 of water each person will use;

7 (B) the proposed place of use of all water by each
 8 person;

9 (C) the nature of the relationship between the
 10 applicant and each person using the water; and

11 (D) each firm contractual agreement for the specified
 12 amount of water for each person using the water; or

13 (d) the appropriate environmental impact statement
 14 fee, if any, is not paid as required by 85-2-124."

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

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

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

4 (2) The department may shall specify in the permit or
5 in any authorized extension of time provided in subsection
6 (3), limit the time limits for commencement of the
7 appropriation works, completion of construction, and actual
8 application of the water to the proposed beneficial use. In
9 fixing those time limits, the department shall consider the
10 cost and magnitude of the project, the engineering and
11 physical features to be encountered, and, on projects
12 designed for gradual development and gradually increased use
13 of water, the time reasonably necessary for that gradual
14 development and increased use. For-good-cause-shown-by-the
15 permittee,--the--department-may-in-its-discretion-reasonably
16 extend-time-limits. The department shall issue the permit or
17 authorized extension of time subject to the terms,
18 conditions, restrictions, and limitations it considers
19 necessary to ensure that the work on the appropriation is
20 commenced, conducted, and completed and that the water is
21 actually applied in a timely manner to the beneficial use
22 specified in the permit.

23 (3) The department may, upon a showing of good cause,
24 extend time limits specified in the permit for commencement
25 of the appropriation works, completion of construction, and

1 actual application of the water to the proposed beneficial
2 use. All requests for extensions of time must be by
3 affidavit and must be filed with the department prior to the
4 expiration of the time limit specified in the permit or any
5 previously authorized extension of time. The department may
6 issue an order temporarily extending the time limit
7 specified in the permit for 120 days or until the department
8 has completed its action under this section, whichever is
9 greater. Upon receipt of a proper request for extension of
10 time, the department shall prepare a notice containing the
11 facts pertinent to the request for extension of time and
12 shall publish the notice in a newspaper of general
13 circulation in the area of the source. The department may
14 serve notice by first-class mail upon any public agency or
15 other person the department determines may be interested in
16 or affected by the request for extension of time. The
17 department shall hold a hearing on the request for extension
18 of time on its own motion or if requested by an interested
19 party. The department may grant the extension of time in
20 the absence of a hearing if no requests for a hearing are
21 received and the extension of time is granted as requested,
22 or the department may grant the extension of time in a
23 modified form by following the process established in
24 85-2-310(2). Subsequent extensions of time may be made in
25 the same manner.

1 ~~(3)~~(4) The original of the permit shall be sent to the
2 permittee, and a copy shall be kept in the office of the
3 department in Helena.

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

10 Section 6. Section 85-2-318, MCA, is amended to read:

11 "85-2-318. Water right appropriation account. There is
12 established a water right appropriation account in the state
13 special revenue fund of the state treasury. All fees
14 collected as provided in 85-2-113 shall be deposited in the
15 account to help pay the expenses incurred by the department
16 for administering and enforcing this part, part 1, part 4,
17 and part 5 of chapter 2, Title 85, and Title 37, chapter
18 43."

19 Section 7. Section 85-2-331, MCA, is amended to read:

20 "85-2-331. Reservations within Missouri River basin.

21 (1) The state or any agency or political subdivision thereof
22 or the Daited States or any agency thereof that desires to
23 apply for a reservation of water in the Missouri River basin
24 shall file an application pursuant to 85-2-316 no later than
25 July 1, ~~1989~~ ~~1991~~ 1989, EXCEPT THAT APPLICATIONS FOR

1 RESERVATION OF WATER BELOW FORT PECK DAM MUST BE FILED NO
2 LATER THAN JULY 1, 1991.

3 (2) Subject to legislative appropriation, the
4 department shall provide technical and financial assistance
5 to other state agencies and political subdivisions in
6 applying for reservations within the Missouri River basin.

7 (3) (A) Before December 31, ~~1991~~ ~~1993~~ 1991, the board
8 shall make a final determination in accordance with 85-2-316
9 on all applications filed before July 1, ~~1989~~ ~~1991~~ 1989, for
10 reservations of water in the Missouri River basin ABOVE FORT
11 PECK DAM.

12 (B) BEFORE DECEMBER 31, 1993, THE BOARD SHALL MAKE A
13 FINAL DETERMINATION IN ACCORDANCE WITH 85-2-316 ON ALL
14 APPLICATIONS FILED BEFORE JULY 1, 1991, FOR RESERVATIONS OF
15 WATER IN THE MISSOURI RIVER BASIN BELOW FORT PECK DAM.

16 (C) THE BOARD SHALL DETERMINE WHICH APPLICATIONS OR
17 PORTIONS OF APPLICATIONS ARE CONSIDERED TO BE ABOVE OR BELOW
18 FORT PECK DAM.

19 (4) Water reservations approved by the board under
20 this section have a priority date of July 1, 1985. If the
21 department issues a permit under Title 85, chapter 2, part
22 3, prior to the granting of a reservation under this
23 section, the board may subordinate the reservation to the
24 permit if it finds that the subordination does not interfere
25 substantially with the purpose of any reservation. The board

1 shall by order establish the relative priority of
2 applications approved under this section."

3 Section 8. Section 85-2-402, MCA, is amended to read:

4 "85-2-402. Changes in appropriation rights. (1) An
5 appropriator may not make a change in an appropriation right
6 except as permitted under this section and with the approval
7 of the department or, if applicable, of the legislature.

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

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

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

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

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

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

25 (b) the proposed change is a reasonable use. A

1 finding of reasonable use must be based on a consideration
2 of:

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

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

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

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

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

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

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

24 (a) the applicant proves by clear and convincing
25 evidence and the department finds that the criteria in

1 subsections (2) and (3) are met; and

2 (b) the department then petitions the legislature and
3 the legislature affirms the decision of the department after
4 one or more public hearings.

5 (5) (a) The state of Montana has long recognized the
6 importance of conserving its public waters and the necessity
7 to maintain adequate water supplies for the state's water
8 requirements, including requirements for reserved water
9 rights held by the United States for federal reserved lands
10 and in trust for the various Indian tribes within the
11 state's boundaries. Although the state of Montana also
12 recognizes that, under appropriate conditions, the
13 out-of-state transportation and use of its public waters are
14 not in conflict with the public welfare of its citizens or
15 the conservation of its waters, the following criteria must
16 be met before out-of-state use may occur:

17 (b) The department and, if applicable, the legislature
18 may not approve a change in appropriation right for the
19 withdrawal and transportation of appropriated water for use
20 outside the state unless the appropriator proves by clear
21 and convincing evidence and, if applicable, the legislature
22 approves after one or more public hearings that:

23 (i) depending on the volume of water diverted or
24 consumed, the applicable criteria and procedures of
25 subsection (2) or (3) are met;

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

3 (iii) 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 appropriator has proved
7 by clear and convincing evidence that the requirements of
8 subsections (5)(b)(ii) and (5)(b)(iii) will be met, the
9 department and, if applicable, the legislature shall
10 consider the following factors:

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

13 (ii) whether the water that is the subject of the
14 proposed change in appropriation might feasibly be
15 transported to alleviate water shortages within the state of
16 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 change in appropriation right
23 to withdraw and transport water for use outside the state,
24 the applicant shall submit to and comply with the laws of
25 the state of Montana governing the appropriation and use of

1 water.

2 (6) For any application for a change in appropriation
3 right involving 4,000 or more acre-feet of water a year and
4 5.5 or more cubic feet per second of water, the department
5 shall give notice of the proposed change in accordance with
6 85-2-307 and shall hold one or more hearings in accordance
7 with 85-2-309 prior to its approval or denial of the
8 proposed change. The department shall provide notice and may
9 hold one or more hearings upon any other proposed change if
10 it determines that such a change might adversely affect the
11 rights of other persons.

12 (7) The department or the legislature, if applicable,
13 may approve a change subject to such terms, conditions,
14 restrictions, and limitations as it considers necessary to
15 satisfy the criteria of this section, including limitations
16 on the time for completion of the change. The department
17 may extend time limits specified in the change approval
18 under the applicable criteria and procedures of 85-2-312(3).

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

1 the department may modify or revoke the change approval.

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

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

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

18 Section 9. Section 85-2-403, MCA, is amended to read:
19 "85-2-403. Transfer of appropriation right. (1) The
20 right to use water shall pass with a conveyance of the land
21 or transfer by operation of law, unless specifically
22 exempted therefrom. All transfers of interests in
23 appropriation rights shall be without loss of priority.

24 (2) Failure to comply with the provisions of
25 85-2-402(6) does not render a conveyance or reservation of a

1 water right void, but the right may not be used until the
2 department has approved the change. This subsection applies
3 retroactively, within the meaning of 1-2-109, to a
4 conveyance or reservation made after July 1, 1973."

5 ~~NEW SECTION. Section 10. Repealer. Section 85-2-317,~~
6 ~~MCA, is repealed.~~

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

11 NEW SECTION. Section 11. Effective date. This act is
12 effective on passage and approval.

-End-

1 HOUSE BILL NO. 642
 2 INTRODUCED BY SPAETH
 3 BY REQUEST OF THE DEPARTMENT
 4 OF NATURAL RESOURCES AND CONSERVATION
 5
 6 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PERMIT AND
 7 UTILIZATION PROVISIONS OF THE WATER USE LAWS; ALTERING THE
 8 FILING AND ISSUANCE REQUIREMENTS OF A CERTIFICATE OF WATER
 9 RIGHT; REDUCING THE PUBLICATION REQUIREMENT FOR A PERMIT
 10 APPLICATION; REDEFINING A REASONABLE PERIOD OF TIME TO
 11 ESTABLISH BONA FIDE INTENT; REVISING THE PROCEDURE FOR
 12 GRANTING AN EXTENSION OF TIME FOR COMPLETING AN
 13 APPROPRIATION UNDER A PERMIT OR CHANGE AUTHORIZATION;
 14 EXPANDING AUTHORITY TO EXPEND MONEY FROM THE WATER RIGHT
 15 APPROPRIATION ACCOUNT; SUBORDINATING PRIORITY DATES OF
 16 MISSOURI RIVER BASIN RESERVATIONS IN A LIMITED CLASS OF
 17 CASES AND EXTENDING DEADLINES FOR RESERVATIONS BELOW FORT
 18 PECK DAM; REVISING THE COMPLIANCE PROVISION IN THE TRANSFER
 19 OF A WATER RIGHT; AMENDING SECTIONS 85-2-236, 85-2-306,
 20 85-2-307, 85-2-310, 85-2-312, 85-2-318, 85-2-331, 85-2-402,
 21 AND 85-2-403, MCA; ~~REPEALING SECTION 85-2-317, MCA;~~ AND
 22 PROVIDING AN IMMEDIATE EFFECTIVE DATE."
 23
 24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 25 Section 1. Section 85-2-236, MCA, is amended to read:

1 "85-2-236. Certificate of water right. (1) When a
 2 final decree is entered, the water judge shall send a copy
 3 to the department. The Except as provided in 85-2-306, the
 4 department shall on the basis of the final decree issue a
 5 certificate of water right to each person decreed an
 6 existing right. The original of the certificate shall be
 7 sent to the person to whom the right is decreed. The
 8 department shall keep a copy of the certificate in its
 9 office in Helena.

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

15 Section 2. Section 85-2-306, MCA, is amended to read:
 16 "85-2-306. Exceptions to permit requirements. (1)
 17 Groundwater may be appropriated only by a person who has
 18 either exclusive property rights in the groundwater
 19 development works or the written consent of the person with
 20 those property rights. Outside the boundaries of a
 21 controlled groundwater area, a permit is not required before
 22 appropriating groundwater by means of a well or developed
 23 spring with a maximum appropriation of less than 100 gallons
 24 per minute, EXCEPT THAT A COMBINED APPROPRIATION FROM THE
 25 SAME SOURCE FROM TWO OR MORE WELLS OR DEVELOPED SPRINGS

1 EXCEEDING THIS LIMITATION REQUIRES A PERMIT. Within 60 days
 2 of completion of the well or developed spring and
 3 appropriation of the groundwater for beneficial use, the
 4 appropriator shall file a notice of completion with the
 5 department on a form provided by the department at its
 6 offices and at the offices of the county clerk and
 7 recorders. Upon receipt of the notice, the department shall
 8 review the notice and may, before issuing a certificate of
 9 water right, return a defective notice for correction or
 10 completion, together with the reasons for returning it. A
 11 notice does not lose priority of filing because of defects
 12 if the notice is corrected, completed, and refiled with the
 13 department within 30 days or within a further time as the
 14 department may allow, not to exceed 6 months. If a notice is
 15 not corrected and completed within the time allowed, the
 16 priority date of appropriation shall be the date of refiling
 17 a correct and complete notice with the department. A
 18 certificate of water right may not be issued until a correct
 19 and complete notice has been filed with the department. The
 20 original of the certificate shall be sent to the county
 21 ~~clerk--and--recorder--in--the--county--where--the--point--of~~
 22 ~~diversion--or--place--of--use--is--located--for--recording~~
 23 appropriator. The department shall keep a copy of the
 24 certificate in its office in Helena. ~~After--recording--the~~
 25 ~~clerk--and--recorder--shall--send--the--certificate--to--the~~

1 ~~appropriator.~~ The date of filing of the notice of completion
 2 is the date of priority of the right.

3 (2) An appropriator of groundwater by means of a well
 4 or developed spring, first put to beneficial use between
 5 January 1, 1962, and July 1, 1973, who did not file a notice
 6 of completion, as required by laws in force prior to April
 7 14, 1981, with the county clerk and recorder shall file a
 8 notice of completion, as provided in subsection (1) of this
 9 section, with the department to perfect the water right. The
 10 filing of a claim of existing water right pursuant to
 11 85-2-221 is sufficient notice of completion under this
 12 subsection. The priority date of the appropriation shall be
 13 the date of the filing of a notice as provided in subsection
 14 (1) of this section or the date of the filing of the claim
 15 of existing water right. An appropriation under this
 16 subsection is an existing right, and a permit is not
 17 required; however, the department shall acknowledge the
 18 receipt of a correct and complete filing of a notice of
 19 completion, except that for an appropriation of less than
 20 100 gallons per minute, the department shall issue a
 21 certificate of water right. If a certificate is issued
 22 under this section, a certificate need not be issued under
 23 the adjudication proceedings provided for in 85-2-236.

24 (3) A permit is not required before constructing an
 25 impoundment or pit and appropriating water for use by

1 livestock if the maximum capacity of the impoundment or pit
 2 is less than 15 acre-feet and the appropriation is less than
 3 30 acre-feet per year and is from a source other than a
 4 perennial flowing stream and the impoundment or pit is to be
 5 constructed on and will be accessible to a parcel of land
 6 that is owned or under the control of the applicant and that
 7 is 40 acres or larger. As used in this subsection, a
 8 perennial flowing stream means a stream which historically
 9 has flowed continuously at all seasons of the year, during
 10 dry as well as wet years. However, within 60 days after
 11 constructing the impoundment or pit, the appropriator shall
 12 apply for a permit as prescribed by this part. Upon receipt
 13 of a correct and complete application for a stockwater
 14 provisional permit, the department shall then automatically
 15 issue a provisional permit. If the department determines
 16 after a hearing that the rights of other appropriators have
 17 been or will be adversely affected, it may revoke the permit
 18 or require the permittee to modify the impoundment or pit
 19 and may then make the permit subject to such terms,
 20 conditions, restrictions, or limitations it considers
 21 necessary to protect the rights of other appropriators.

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

25 Section 3. Section 85-2-307, MCA, is amended to read:

1 "85-2-307. Notice of application. (1) (a) Upon receipt
 2 of a proper application for a permit, the department shall
 3 prepare a notice containing the facts pertinent to the
 4 application and shall publish the notice once in a newspaper
 5 of general circulation in the area of the source ~~once-a-week~~
 6 ~~for-2-consecutive-weeks~~.

7 (b) Before the ~~last~~ date of publication, the
 8 department shall also serve the notice by first-class mail
 9 upon:

10 (i) an appropriator of water or applicant for or
 11 holder of a permit who, according to the records of the
 12 department, may be affected by the proposed appropriation;

13 (ii) any purchaser under contract for deed, as defined
 14 in 70-20-115, of property that, according to the records of
 15 the department, may be affected by the proposed
 16 appropriation; and

17 (iii) any public agency that has reserved waters in the
 18 source under 85-2-316.

19 (c) The department may, in its discretion, also serve
 20 notice upon any state agency or other person the department
 21 feels may be interested in or affected by the proposed
 22 appropriation.

23 (d) The department shall file in its records proof of
 24 service by affidavit of the publisher in the case of notice
 25 by publication and by its own affidavit in the case of

1 service by mail.

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

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

11 Section 4. Section 85-2-310, MCA, is amended to read:

12 "85-2-310. Action on application. (1) The department
13 shall grant, deny, or condition an application for a permit
14 in whole or in part within 120 days after the last date of
15 publication of the notice of application if no objections
16 have been received and within 180 days if a hearing is held
17 or objections have been received. However, in either case
18 the time may be extended upon agreement of the applicant,
19 or, in those cases where an environmental impact statement
20 must be prepared or in other extraordinary cases, not more
21 than 60 days upon order of the department. If the
22 department orders the time extended, it shall serve a notice
23 of the extension and the reasons therefor by certified mail
24 upon the applicant and each person who has filed an
25 objection as provided by 85-2-308.

1 (2) However, an application may not be approved in a
2 modified form or upon terms, conditions, or limitations
3 specified by the department or denied, unless the applicant
4 is first granted an opportunity to be heard. If no objection
5 is filed against the application but the department is of
6 the opinion that the application should be approved in a
7 modified form or upon terms, conditions, or limitations
8 specified by it or that the application should be denied,
9 the department shall prepare a statement of its opinion and
10 the reasons therefor. The department shall serve a statement
11 of its opinion by certified mail upon the applicant,
12 together with a notice that the applicant may obtain a
13 hearing by filing a request therefor within 30 days after
14 the notice is mailed. The notice shall further state that
15 the application will be modified in a specified manner or
16 denied, unless a hearing is requested.

17 (3) The department may cease action upon an
18 application for a permit and return it to the applicant when
19 it finds that the application is not in good faith or does
20 not show a bona fide intent to appropriate water for a
21 beneficial use. An application returned for any of these
22 reasons shall be accompanied by a statement of the reasons
23 for which it was returned, and there shall be no right to a
24 priority date based upon the filing of the application.
25 Returning an application pursuant to this subsection shall

1 be deemed a final decision of the department.

2 (4) For all applications filed after July 1, 1973, the
3 department shall find that an application is not in good
4 faith or does not show a bona fide intent to appropriate
5 water for a beneficial use if:

6 (a) an application is not corrected and completed as
7 required by 85-2-302;

8 (b) the appropriate filing fee is not paid;

9 (c) the application does not document:

10 (i) a beneficial use of water;

11 (ii) the proposed place of use of all water applied
12 for;

13 (iii) for an appropriation of 4,000 acre-feet a year or
14 more and 5.5 cubic feet per second or more, a detailed
15 project plan ~~including,--but--not--limited--to,--a--reasonable~~
16 ~~time--line--for--the--completion--of--the--project--and--the--actual~~
17 ~~application--of--the--water--to--a--beneficial--use,--which--may--not~~
18 ~~exceed--10--years--from--the--date--of--application,--detailing~~
19 describing when and how much water will be put to a
20 beneficial use~~7~~. The project plan must include a reasonable
21 time line, not to exceed 10 years from the time of issuance
22 of a permit, for the completion of the project and the
23 actual application of the water to a beneficial use.

24 (iv) for appropriations not covered in subsection
25 (4)(c)(iii), a general project plan stating when and how

1 much water will be put to a beneficial use; and

2 (v) if the water applied for is to be appropriated
3 above that which will be used solely by the applicant or if
4 it will be marketed by the applicant to other users,
5 information detailing:

6 (A) each person who will use the water and the amount
7 of water each person will use;

8 (B) the proposed place of use of all water by each
9 person;

10 (C) the nature of the relationship between the
11 applicant and each person using the water; and

12 (D) each firm contractual agreement for the specified
13 amount of water for each person using the water; or

14 (d) the appropriate environmental impact statement
15 fee, if any, is not paid as required by 85-2-124."

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

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

1 satisfy the criteria listed in 85-2-311, and it may issue
2 temporary or seasonal permits. A permit shall be issued
3 subject to existing rights and any final determination of
4 those rights made under this chapter.

5 (2) The department ~~may shall specify in the permit or~~
6 ~~in any authorized extension of time provided in subsection~~
7 ~~(3), limit the time limits for commencement of the~~
8 ~~appropriation works, completion of construction, and actual~~
9 ~~application of the water to the proposed beneficial use. In~~
10 ~~fixing those time limits, the department shall consider the~~
11 ~~cost and magnitude of the project, the engineering and~~
12 ~~physical features to be encountered, and, on projects~~
13 ~~designed for gradual development and gradually increased use~~
14 ~~of water, the time reasonably necessary for that gradual~~
15 ~~development and increased use. For-good-cause-shown--by--the~~
16 ~~permittee,--the--department--may--in--its--discretion--reasonably~~
17 ~~extend--time--limits. The department shall issue the permit or~~
18 ~~authorized extension of time subject to the terms,~~
19 ~~conditions, restrictions, and limitations it considers~~
20 ~~necessary to ensure that the work on the appropriation is~~
21 ~~commenced, conducted, and completed and that the water is~~
22 ~~actually applied in a timely manner to the beneficial use~~
23 ~~specified in the permit.~~

24 (3) The department may, upon a showing of good cause,
25 extend time limits specified in the permit for commencement

1 of the appropriation works, completion of construction, and
2 actual application of the water to the proposed beneficial
3 use. All requests for extensions of time must be by
4 affidavit and must be filed with the department prior to the
5 expiration of the time limit specified in the permit or any
6 previously authorized extension of time. The department may
7 issue an order temporarily extending the time limit
8 specified in the permit for 120 days or until the department
9 has completed its action under this section, whichever is
10 greater. Upon receipt of a proper request for extension of
11 time, the department shall prepare a notice containing the
12 facts pertinent to the request for extension of time and
13 shall publish the notice in a newspaper of general
14 circulation in the area of the source. The department may
15 serve notice by first-class mail upon any public agency or
16 other person the department determines may be interested in
17 or affected by the request for extension of time. The
18 department shall hold a hearing on the request for extension
19 of time on its own motion or if requested by an interested
20 party. The department may grant the extension of time in
21 the absence of a hearing if no requests for a hearing are
22 received and the extension of time is granted as requested,
23 or the department may grant the extension of time in a
24 modified form by following the process established in
25 85-2-310(2). Subsequent extensions of time may be made in

1 the same manner.

2 ~~(3)~~(4) The original of the permit shall be sent to the
3 permittee, and a copy shall be kept in the office of the
4 department in Helena.

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

11 Section 6. Section 85-2-318, MCA, is amended to read:

12 "85-2-318. Water right appropriation account. There is
13 established a water right appropriation account in the state
14 special revenue fund of the state treasury. All fees
15 collected as provided in 85-2-113 shall be deposited in the
16 account to help pay the expenses incurred by the department
17 for administering and enforcing this part, part 1, part 4,
18 and part 5 of chapter 2, Title 85, and Title 37, chapter
19 43."

20 Section 7. Section 85-2-331, MCA, is amended to read:

21 "85-2-331. Reservations within Missouri River basin.
22 (1) The state or any agency or political subdivision thereof
23 or the United States or any agency thereof that desires to
24 apply for a reservation of water in the Missouri River basin
25 shall file an application pursuant to 85-2-316 no later than

1 July 1, 1989 ~~1991~~ 1989, EXCEPT THAT APPLICATIONS FOR
2 RESERVATION OF WATER BELOW FORT PECK DAM MUST BE FILED NO
3 LATER THAN JULY 1, 1991.

4 (2) Subject to legislative appropriation, the
5 department shall provide technical and financial assistance
6 to other state agencies and political subdivisions in
7 applying for reservations within the Missouri River basin.

8 (3) (A) Before December 31, ~~1991~~ ~~1993~~ 1991, the board
9 shall make a final determination in accordance with 85-2-316
10 on all applications filed before July 1, ~~1989~~ ~~1991~~ 1989, for
11 reservations of water in the Missouri River basin ABOVE FORT
12 PECK DAM.

13 (B) BEFORE DECEMBER 31, 1993, THE BOARD SHALL MAKE A
14 FINAL DETERMINATION IN ACCORDANCE WITH 85-2-316 ON ALL
15 APPLICATIONS FILED BEFORE JULY 1, 1991, FOR RESERVATIONS OF
16 WATER IN THE MISSOURI RIVER BASIN BELOW FORT PECK DAM.

17 (C) THE BOARD SHALL DETERMINE WHICH APPLICATIONS OR
18 PORTIONS OF APPLICATIONS ARE CONSIDERED TO BE ABOVE OR BELOW
19 FORT PECK DAM.

20 (4) Water reservations approved by the board under
21 this section have a priority date of July 1, 1985. If the
22 department issues a permit under Title 85, chapter 2, part
23 3, prior to the granting of a reservation under this
24 section, the board may subordinate the reservation to the
25 permit if it finds that the subordination does not interfere

1 substantially with the purpose of any reservation. The board
2 shall by order establish the relative priority of
3 applications approved under this section."

4 Section 8. Section 85-2-402, MCA, is amended to read:
5 "85-2-402. Changes in appropriation rights. (1) An
6 appropriator may not make a change in an appropriation right
7 except as permitted under this section and with the approval
8 of the department or, if applicable, of the legislature.

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

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

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

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

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

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

1 (b) the proposed change is a reasonable use. A
2 finding of reasonable use must be based on a consideration
3 of:

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

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

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

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

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

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

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

25 (a) the applicant proves by clear and convincing

1 evidence and the department finds that the criteria in
2 subsections (2) and (3) are met; and

3 (b) the department then petitions the legislature and
4 the legislature affirms the decision of the department after
5 one or more public hearings.

6 (5) (a) The state of Montana has long recognized the
7 importance of conserving its public waters and the necessity
8 to maintain adequate water supplies for the state's water
9 requirements, including requirements for reserved water
10 rights held by the United States for federal reserved lands
11 and in trust for the various Indian tribes within the
12 state's boundaries. Although the state of Montana also
13 recognizes that, under appropriate conditions, the
14 out-of-state transportation and use of its public waters are
15 not in conflict with the public welfare of its citizens or
16 the conservation of its waters, the following criteria must
17 be met before out-of-state use may occur:

18 (b) The department and, if applicable, the legislature
19 may not approve a change in appropriation right for the
20 withdrawal and transportation of appropriated water for use
21 outside the state unless the appropriator proves by clear
22 and convincing evidence and, if applicable, the legislature
23 approves after one or more public hearings that:

24 (i) depending on the volume of water diverted or
25 consumed, the applicable criteria and procedures of

1 subsection (2) or (3) are met;

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

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

7 (c) In determining whether the appropriator has proved
8 by clear and convincing evidence that the requirements of
9 subsections (5)(b)(ii) and (5)(b)(iii) will be met, the
10 department and, if applicable, the legislature shall
11 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 proposed change in appropriation might feasibly be
16 transported to alleviate water shortages within the state of
17 Montana;

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

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

23 (d) When applying for a change in appropriation right
24 to withdraw and transport water for use outside the state,
25 the applicant shall submit to and comply with the laws of

1 the state of Montana governing the appropriation and use of
2 water.

3 (6) For any application for a change in appropriation
4 right involving 4,000 or more acre-feet of water a year and
5 5.5 or more cubic feet per second of water, the department
6 shall give notice of the proposed change in accordance with
7 85-2-307 and shall hold one or more hearings in accordance
8 with 85-2-309 prior to its approval or denial of the
9 proposed change. The department shall provide notice and may
10 hold one or more hearings upon any other proposed change if
11 it determines that such a change might adversely affect the
12 rights of other persons.

13 (7) The department or the legislature, if applicable,
14 may approve a change subject to such terms, conditions,
15 restrictions, and limitations as it considers necessary to
16 satisfy the criteria of this section, including limitations
17 on the time for completion of the change. The department
18 may extend time limits specified in the change approval
19 under the applicable criteria and procedures of 85-2-312(3).

20 (8) If a change is not completed as approved by the
21 department or legislature or if the terms, conditions,
22 restrictions, and limitations of the change approval are not
23 complied with, the department may, after notice and
24 opportunity for hearing, require the appropriator to show
25 cause why the change approval should not be modified or

1 revoked. If the appropriator fails to show sufficient cause,
2 the department may modify or revoke the change approval.

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

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

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

19 Section 9. Section 85-2-403, MCA, is amended to read:
20 "85-2-403. Transfer of appropriation right. (1) The
21 right to use water shall pass with a conveyance of the land
22 or transfer by operation of law, unless specifically
23 exempted therefrom. All transfers of interests in
24 appropriation rights shall be without loss of priority.

25 (2) Failure to comply with the provisions of

1 85-2-402{6} does not render a conveyance or reservation of a
2 water right void, but the right may not be used until the
3 department has approved the change. This subsection applies
4 retroactively, within the meaning of 1-2-109, to a
5 conveyance or reservation made after July 1, 1973."

6 ~~NEW SECTION. Section 10. Repealer. Section 85-2-317,~~
7 ~~MCA, is repealed.~~

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

12 NEW SECTION. Section 11. Effective date. This act is
13 effective on passage and approval.

-End-

STANDING COMMITTEE REPORT

SENATE

MARCH 25 19 87

MR. PRESIDENT

We, your committee on NATURAL RESOURCES

having had under consideration HOUSE BILL No. 642

THIRD reading copy (BLUE)
color

REVISES WATER PERMIT LAWS; QUALIFIES MISSOURI BASIN WATER RESERVATIONS

SPAETH (KEATING)

Respectfully report as follows: That HOUSE BILL No. 642

BE AMENDED AS FOLLOWS:

- 1. Page 2, line 24
Following: "APPROPRIATION"
Insert: "from the same source"

KPK

AND AS AMENDED
BE CONCURRED IN

XXXXXX

XXXXXXXXXXXX

Thomas F. Keating

SENATOR THOMAS F. KEATING, Chairman.

3-25-87
TK
3-25