

HOUSE BILL NO. 651

INTRODUCED BY JENKINS, E. SMITH, NATHE, HOFFMAN, KOLSTAD,  
WALKER, ROTH, ASAY, SWIFT, DEVLIN, IVERSON, BACHINI, ABRAMS,  
ELLISON, PATTERSON, HANSON, SWITZER, POFF, STRATFORD,  
GRINDE, GILBERT, GLASER, SALES, DRISCOLL, D. BROWN, COMPTON,  
MENKE, KELLER, SCHYE, CORNE', KOEHNKE, DEMARS, STANG,  
HARPER, WEEDING, TVEIT, MANUEL, HAMMOND, SWYSGOOD, WHALEN,  
SPAETH, HOLLIDAY, O'CONNELL, VINCENT, HANNAH, THAYER,  
VAN VALKENBURG, HALLIGAN, MCCALLUM, BOYLAN, RAPP-SVRCEK,  
BULGER, FARRELL, HANSEN, MARKS, QUILICI, MANNING, SEVERSON,  
ANDERSON, HOFMAN, AKLESTAD, BISHOP,  
BLAYLOCK, HIRSCH, BARDANOUE

IN THE HOUSE

FEBRUARY 7, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
FEBRUARY 14, 1987	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
FEBRUARY 16, 1987	PRINTING REPORT.
FEBRUARY 17, 1987	SECOND READING, DO PASS.
FEBRUARY 18, 1987	ENGROSSING REPORT.  THIRD READING, PASSED. AYES, 88; NOES, 0.  TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 19, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
MARCH 19, 1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 23, 1987	SECOND READING, CONCURRED IN.

MARCH 25, 1987

THIRD READING, CONCURRED IN.  
AYES, 49; NOES, 0.

RETURNED TO HOUSE.

IN THE HOUSE

MARCH 26, 1987

RECEIVED FROM SENATE.

SENT TO ENROLLING.

1 House BILL NO. 651  
 2 INTRODUCED BY Waller Judith E. Smith NATHAN HOFFMAN Kelley  
 3 AL GOSWAMI James Robinson M. Hargrett STRATTON  
 4 A BILL FOR AN ACT ENTITLED WATER SALES DRINKING WATER CRINDLE  
 5 SET-ASIDE UNDER A STATE OR FEDERAL CONSERVATION PROGRAM AND Waller  
 6 THE RESULTING REDUCTION IN USE OF A WATER APPROPRIATION Waller  
 7 RIGHT DOES NOT COMPRISE AN INTENT TO ABANDON PART OR ALL OF Waller  
 8 THE APPROPRIATION RIGHT AND MAY NOT BE USED TO ESTABLISH A Waller  
 9 PRIMA FACIE PRESUMPTION OF ABANDONMENT; AMENDING SECTION Waller  
 10 85-2-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE." Waller  
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: Waller  
 12 Section 1. Section 85-2-404, MCA, is amended to read: Waller  
 13 "85-2-404. Abandonment of appropriation right. (1) If Waller  
 14 an appropriator ceases to use all or a part of his Waller  
 15 appropriation right with the intention of wholly or Waller  
 16 partially abandoning the right or if he ceases using his Waller  
 17 appropriation right according to its terms and conditions Waller  
 18 with the intention of not complying with those terms and Waller  
 19 conditions, the appropriation right shall, to that extent, Waller  
 20 be deemed considered abandoned and shall immediately expire. Waller  
 21 (2) If an appropriator ceases to use all or part of Waller  
 22 his appropriation right or ceases using his appropriation Waller  
 23 right according to its terms and conditions for a period of Waller  
 24 10 successive years and there was water available for his Waller  
 25

1 use, there shall be a prima facie presumption that the  
 2 appropriator has abandoned his right in whole or for the  
 3 part not used.  
 4 (3) If an appropriator ceases to use all or part of  
 5 his appropriation right because the land to which the water  
 6 is applied to a beneficial use is contracted under a state  
 7 or federal conservation set-aside program:  
 8 (a) the set-aside and resulting reduction in use of  
 9 the appropriation right does not represent an intent by the  
 10 appropriator to wholly or partially abandon the  
 11 appropriation right or to not comply with the terms and  
 12 conditions attached to the right; and  
 13 (b) the period of nonuse that occurs for part or all  
 14 of the appropriation right as a result of the contract may  
 15 not create or may not be added to any previous period of  
 16 nonuse to create a prima facie presumption of abandonment.  
 17 ~~(3)(4) This section does~~ Subsections (1) and (2) do  
 18 not apply to existing rights until they have been determined  
 19 in accordance with part 2 of this chapter."  
 20 NEW SECTION. Section 2. 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 3. Effective date. This act is  
 25 effective on passage and approval.

-End-  
-2-

INTRODUCED BILL  
HB-651



APPROVED BY COMM. ON NATURAL RESOURCES

1 *Waller* House BILL NO. *651*  
 2 INTRODUCED BY *James E. Smith* NA *112* *Huffman* *Rubio*  
 3 *Streator*  
 4 A BILL FOR AN ACT ENTITLED "AN ACT PROVIDING THAT A LAND  
 5 SET-ASIDE UNDER A STATE OR FEDERAL CONSERVATION PROGRAM AND  
 6 THE RESULTING REDUCTION IN USE OF A WATER APPROPRIATION  
 7 RIGHT DOES NOT COMPRISE AN INTENT TO ABANDON PART OR ALL OF  
 8 THE APPROPRIATION RIGHT AND MAY NOT BE USED TO ESTABLISH A  
 9 PRIMA FACIE PRESUMPTION OF ABANDONMENT; AMENDING SECTION  
 10 85-2-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."  
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 12 Section 1. Section 85-2-404, MCA, is amended to read:  
 13 "85-2-404. Abandonment of appropriation right. (1) If  
 14 an appropriator ceases to use all or a part of his  
 15 appropriation right with the intention of wholly or  
 16 partially abandoning the right or if he ceases using his  
 17 appropriation right according to its terms and conditions  
 18 with the intention of not complying with those terms and  
 19 conditions, the appropriation right shall, to that extent,  
 20 be deemed considered abandoned and shall immediately expire.  
 21 (2) If an appropriator ceases to use all or part of  
 22 his appropriation right or ceases using his appropriation  
 23 right according to its terms and conditions for a period of  
 24 10 successive years and there was water available for his  
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 2 appropriator has abandoned his right in whole or for the  
 3 part not used.  
 4 (3) If an appropriator ceases to use all or part of  
 5 his appropriation right because the land to which the water  
 6 is applied to a beneficial use is contracted under a state  
 7 or federal conservation set-aside program:  
 8 (a) the set-aside and resulting reduction in use of  
 9 the appropriation right does not represent an intent by the  
 10 appropriator to wholly or partially abandon the  
 11 appropriation right or to not comply with the terms and  
 12 conditions attached to the right; and  
 13 (b) the period of nonuse that occurs for part or all  
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 24 NEW SECTION. Section 3. Effective date. This act is  
 25 effective on passage and approval.

-End-

-2-

SECOND READING  
HB 651



1 *W. Waller* House BILL NO. 651  
 2 INTRODUCED BY *Judith E. Smith* NA THE *Hoffman*  
 3 *Alison* *Beaton* *Robison* *Switzer* *CRINDG*  
 4 A BILL FOR AN ACT ENTITLED "AN ACT PROVIDING THAT A LAND COMP  
 5 SET-ASIDE UNDER A STATE OR FEDERAL CONSERVATION PROGRAM AND  
 6 THE RESULTING REDUCTION IN USE OF A WATER APPROPRIATION  
 7 RIGHT DOES NOT COMPRISE AN INTENT TO ABANDON PART OR ALL OF  
 8 THE APPROPRIATION RIGHT AND MAY NOT BE USED TO ESTABLISH A  
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 15 an appropriator ceases to use all or a part of his  
 16 appropriation right with the intention of wholly or  
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 19 with the intention of not complying with those terms and  
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 24 right according to its terms and conditions for a period of  
 25 10 successive years and there was water available for his

1 use, there shall be a prima facie presumption that the  
 2 appropriator has abandoned his right in whole or for the  
 3 part not used.

4 (3) If an appropriator ceases to use all or part of  
 5 his appropriation right because the land to which the water  
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 7 or federal conservation set-aside program:

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 11 appropriation right or to not comply with the terms and  
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THIRD READING  
 HB-651



HOUSE BILL NO. 651

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(2) If an appropriator ceases to use all or part of  
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 conditions attached to the right; and

(b) the period of nonuse that occurs for part or all  
 of the appropriation right as a result of the contract may  
 not create or may not be added to any previous period of



1 nonuse to create a prima facie presumption of abandonment.

2 ~~†3†(4) This-section-does Subsections (1) and (2) do~~  
3 not apply to existing rights until they have been determined  
4 in accordance with part 2 of this chapter."

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