## HOUSE BILL NO. 542

# INTRODUCED BY GUTHRIE, AKLESTAD, HAYNE, WESTLAKE, CAMPBELL, COBB, ELLIOTT, WILLIAMS, DEMARS, KOEHNKE

### IN THE HOUSE

FEBRUARY 2, 1989 INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.

FIRST READING.

ON MOTION BY CHIEF SPONSOR, SENATOR WILLIAMS AND REPRESENTATIVES HAYNE, WESTLAKE, CAMPBELL, COBB, ELLIOTT, DEMARS, AND KOEHNKE ADDED AS SPONSORS.

INTRODUCED AND REFERRED TO COMMITTEE ON AGRICULTURE, LIVESTOCK & IRRIGATION.

- FEBRUARY 14, 1989 COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
- FEBRUARY 15, 1989 PRINTING REPORT.
- FEBRUARY 18, 1989 SECOND READING, DO PASS.

FEBRUARY 20, 1989 ENGROSSING REPORT.

FEBRUARY 21, 1989 THIRD READING, PASSED. AYES, 95; NOES, 1.

TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 28, 1989

FIRST READING.

MARCH 20, 1989 COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.

MARCH 21, 1989 SECOND READING, PASS CONSIDERATION. MARCH 22, 1989 SECOND READING, CONCURRED IN AS AMENDED. MARCH 27, 1989 THIRD READING, CONCURRED IN. AYES, 34; NOES, 15. RETURNED TO HOUSE WITH AMENDMENTS. IN THE HOUSE MARCH 31, 1989 RECEIVED FROM SENATE. SECOND READING, AMENDMENTS CONCURRED IN. APRIL 1, 1989 THIRD READING, AMENDMENTS CONCURRED IN. SENT TO ENROLLING. REPORTED CORRECTLY ENROLLED.

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LC 1341/01

AQUSE BILL NO. 542 ARLESTAD INTRODUCED BY A BILL FOR AN ACT ENTITLED: "AN ACT CHANGING THE BURDEN OF PROOF FROM SUBSTANTIAL CREDIBLE EVIDENCE TO CLEAR AND CONVINCING EVIDENCE FOR CERTAIN WATER PERMIT CRITERIA IF A VALID OBJECTION TO THE APPLICATION IS FILED; REQUIRING THE APPLICANT TO SUBMIT INDEPENDENT EVIDENCE TO MEET THE CLEAR AND CONVINCING EVIDENCE STANDARD: AMENDING SECTION 85-2-311. MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE." BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: Section 1. Section 85-2-311, MCA, is amended to read: "85-2-311. Criteria for issuance of permit. (1) Except as provided in subsections (2) through--+++ and (3), the department shall issue a permit if the applicant proves by substantial credible evidence, or by clear and convincing evidence if a valid objection to the application is filed according to this part, that the following criteria are met:

21 supply:22 (i) at times when the water can be put to the use

(a) there are unappropriated waters in the source of

23 proposed by the applicant;

24 (ii) in the amount the applicant seeks to appropriate;
25 and

ana Legislative Council

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

3 (b) the water rights of a prior appropriator will not4 be adversely affected;

5 (c) the proposed means of diversion, construction, and 6 operation of the appropriation works are adequate;

7 (d) the proposed use of water is a beneficial use;
8 (e) the proposed use will not interfere unreasonably
9 with other planned uses or developments for which a permit
10 has been issued or for which water has been reserved.

11 (2) The department may not issue a permit for an appropriation of 4,000 or more acre-feet of water a year and 13 5.5 or more cubic feet per second of water unless the 14 applicant proves by clear and convincing evidence that:

15 (a) the criteria in subsection (1) are met;

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

18 (c) the proposed appropriation is a reasonable use.
19 Such a finding shall be based on a consideration of the
20 following:

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

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### LC 1341/01

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

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2 (iii) the effects on the quantity and quality of water3 for existing beneficial uses in the source of supply;

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

7 (v) the effects on private property rights by any8 creation of or contribution to saline seep; and

9 (vi) the probable significant adverse environmental 10 impacts of the proposed use of water as determined by the 11 department pursuant to Title 75, chapter 1, or Title 75, 12 chapter 20.

13 (3) (a) The state of Montana has long recognized the 14 importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water 15 16 requirements, including requirements for reserved water 17 rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the 18 state's boundaries. Although the state of Montana also 19 20 recognizes that, under appropriate conditions, the 21 out-of-state transportation and use of its public waters are 22 not in conflict with the public welfare of its citizens or 23 the conservation of its waters, the criteria in this 24 subsection (3) must be met before out-of-state use may 25 occur.

1 (b) The department may not issue a permit for the 2 appropriation of water for withdrawal and transportation for 3 use outside the state unless the applicant proves by clear 4 and convincing evidence that:

5 (i) depending on the volume of water diverted or 6 consumed, the applicable criteria and procedures of 7 subsection (1) or (2) are met;

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

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

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

17 (i) whether there are present or projected water18 shortages within the state of Montana;

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

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

25 (iv) the demands placed on the applicant's supply in

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### LC 1341/01

1 the state where the applicant intends to use the water.

2 (d) When applying for a permit or a lease to withdraw 3 and transport water for use outside the state, the applicant 4 shall submit to and comply with the laws of the state of 5 Montana governing the appropriation, lease, and use of 6 water.

7 (4) To meet the clear and convincing evidence standard
8 in this section, the applicant shall submit independent
9 hydrologic or other evidence demonstrating that the criteria
10 are met.

11 (5) An appropriation, diversion, impoundment, use, 12 restraint. or attempted appropriation, diversion, 13 impoundment, use, or restraint contrary to the provisions of this section is invalid. No An officer, agent, agency, or 14 employee of the state may not knowingly permit, aid, or 15 16 assist in any manner such an unauthorized appropriation, 17 diversion, impoundment, use, or other restraint. No A person 18 or corporation may not, directly or indirectly, personally 19 or through an agent, officer, or employee, attempt to appropriate, divert, impound, use, or otherwise restrain or 20 21 control waters within the boundaries of this state except 22 in accordance with this section."

23 <u>NEW SECTION.</u> Section 2. Extension of authority. Any 24 existing authority to make rules on the subject of the 25 provisions of [this act] is extended to the provisions of LC 1341/01

1 [this act].

2 NEW SECTION. Section 3. Effective date. [This act] is

3 effective on passage and approval.

-End-

### 51st Legislature

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HB 0542/02

APPROVED BY COMM. ON Natural resources

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1	HOUSE BILL NO. 542	1	(ii) in the amount the applicant seeks to appropriate;
2	INTRODUCED BY GUTHRIE, AKLESTAD, HAYNE, WESTLAKE,	2	and
3	CAMPBELL, COBB, ELLIOTT, WILLIAMS, DEMARS, KOEHNKE	3	(iii) throughout the period during which the applicant
4		4	seeks to appropriate, the amount requested is available;
5	A BILL FOR AN ACT ENTITLED: "AN ACT CHANGING-THE-BURDENOP	5	(b) the water rights of a prior appropriator will not
6	PROOPPROMSUBSTANTIALCREDIBLEEVIDENCETOCLEARAND	6	be adversely affected;
7	Convincing-byidence-for-certain-water-pernit-criteriaipa	7	(c) the proposed means of diversion, construction, and
8	VALIDOBJECTIONTO-THE-APPLICATION-IS-FILED; REQUIRING THE	8	operation of the appropriation works are adequate;
9	AN APPLICANT FOR A WATER USE PERMIT TO SUBMIT INDEPENDENT	9	(d) the proposed use of water is a beneficial use;
10	EVIDENCE TO MEET THE CHEARANDCONVINCING SUBSTANTIAL	10	(e) the proposed use will not interfere unreasonably
11	CREDIBLE EVIDENCE STANDARD; AMENDING SECTION 85-2-311, MCA;	11	with other planned uses or developments for which a permit
12	AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."	12	has been issued or for which water has been reserved.
13		13	(2) The department may not issue a permit for an
14	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	14	appropriation of 4,000 or more acre-feet of water a year and
15	Section 1. Section 85-2-311, MCA, is amended to read:	15	5.5 or more cubic feet per second of water unless the
16	*85-2-311. Criteria for issuance of permit. (1) Except	16	applicant proves by clear and convincing evidence that:
17	as provided in subsections (2) through(4) and (3), the	17	(a) the criteria in subsection (1) are met;
18	department shall issue a permit if the applicant proves by	18	(b) the rights of a prior appropriator will not be
19	substantial credible evidence <u>r-or-byclearandconvincing</u>	19	adversely affected;
20	evidenceifavalid-objection-to-the-application-is-filed	20	(c) the proposed appropriation is a reasonable use.
21	according-to-this-party that the following criteria are met:	21	Such a finding shall be based on a consideration of the
22	(a) there are unappropriated waters in the source of	22	following:
23	supply:	23	(i) the existing demands on the state water supply, as
24	(i) at times when the water can be put to the use	24	well as projected demands such as reservations of water for
25	proposed by the applicant;	25	future beneficial purposes, including municipal water
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SECOND READING

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supplies, irrigation systems, and minimum streamflows for
 the protection of existing water rights and aquatic life:

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

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

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

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

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

(3) (a) The state of Montana has long recognized the 15 16 importance of conserving its public waters and the necessity 17 to maintain adequate water supplies for the state's water 18 requirements, including requirements for reserved water rights held by the United States for federal reserved lands 19 and in trust for the various Indian tribes within the 20 21 state's boundaries. Although the state of Montana also 22 recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are 23 24 not in conflict with the public welfare of its citizens or 25 the conservation of its waters, the criteria in this 1 subsection (3) must be met before out-of-state use may
2 occur.

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

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

10 (ii) the proposed out-of-state use of water is not 11 contrary to water conservation in Montana; and

12 (iii) the proposed out-of-state use of water is not13 otherwise detrimental to the public welfare of the citizens14 of Montana.

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

19 (i) whether there are present or projected water20 shortages within the state of Montana;

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

24 (iii) the supply and sources of water available to the25 applicant in the state where the applicant intends to use

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1 the water; and

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2 (iv) the demands placed on the applicant's supply in3 the state where the applicant intends to use the water.

4 (d) When applying for a permit or a lease to withdraw 5 and transport water for use outside the state, the applicant 6 shall submit to and comply with the laws of the state of 7 Montana governing the appropriation, lease, and use of 8 water.

(4) To meet the clear--and--convincing SUBSTANTIAL 9 CREDIBLE evidence standard in this section, the applicant 10 shall submit independent hydrologic or other evidence, 11 12 INCLUDING WATER SUPPLY DATA, FIELD REPORTS, AND OTHER 13 INFORMATION DEVELOPED BY THE DEPARTMENT, THE U.S. GEOLOGICAL 14 SURVEY, OR THE U.S. SOIL CONSERVATION SERVICE AND OTHER SPECIFIC FIELD STUDIES, demonstrating that the criteria are 15 16 met.

17 (5) An appropriation, diversion, impoundment, use, 18 restraint, or attempted appropriation, diversion, impoundment, use, or restraint contrary to the provisions of 19 20 this section is invalid. No An officer, agent, agency, or 21 employee of the state may not knowingly permit, aid, or 22 assist in any manner such an unauthorized appropriation, 23 diversion, impoundment, use, or other restraint. No A person or corporation may not, directly or indirectly, personally 24 25 or through an agent, officer, or employee, attempt to

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appropriate, divert, impound, use, or otherwise restrain or
 control waters within the boundaries of this state except

3 in accordance with this section."

NEW SECTION. Section 2. Extension of authority. Any
existing authority to make rules on the subject of the
provisions of [this act] is extended to the provisions of
[this act].

<u>NEW SECTION.</u> Section 3. Effective date. [This act] is
 effective on passage and approval.

-End-

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HB 0542/02

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1	HOUSE BILL NO. 542	1	(ii) in the amount the applicant seeks to appropriate;
2	INTRODUCED BY GUTHRIE, AKLESTAD, HAYNE, WESTLAKE,	2	and
3	CAMPBELL, COBB, ELLIOTT, WILLIAMS, DEMARS, KOEHNKE	3	(iii) throughout the period during which the applicant
4		4	seeks to appropriate, the amount requested is available;
5	A BILL FOR AN ACT ENTITLED: "AN ACT CHANGING-THE-BURDENOP	5	(b) the water rights of a prior appropriator will not
6	Proofpromsubstantialcredibleevidencetoclearand	6	be adversely affected;
7	Convincing-evidence-por-certain-water-permit-criteriaifa	7	(c) the proposed means of diversion, construction, and
B	VALIDOBJECTIONTO-THE-APPLICATION-IS-FILED; REQUIRING THE	8	operation of the appropriation works are adequate;
9	AN APPLICANT FOR A WATER USE PERMIT TO SUBMIT INDEPENDENT	9	(d) the proposed use of water is a beneficial use;
10	EVIDENCE TO MEET THE ELEARANDCONVINCING SUBSTANTIAL	10	(e) the proposed use will not interfere unreasonably
11	CREDIBLE EVIDENCE STANDARD; AMENDING SECTION 85-2-311, MCA;	11	with other planned uses or developments for which a permit
12	AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."	12	has been issued or for which water has been reserved.
13		13	(2) The department may not issue a permit for an
14	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	14	appropriation of 4,000 or more acre-feet of water a year and
15	Section 1. Section 85-2-311, MCA, is amended to read:	15	5.5 or more cubic feet per second of water unless the
16	<b>*85-2-311.</b> Criteria for issuance of permit. (1) Except	16	applicant proves by clear and convincing evidence that:
17	as provided in subsections (2) through(4) and (3), the	17	<ul><li>(a) the criteria in subsection (1) are met;</li></ul>
18	department shall issue a permit if the applicant proves by	18	(b) the rights of a prior appropriator will not be
19	substantial credible evidence <del>y-or-byclearandconvincing</del>	19	adversely affected;
20	evidenceifavalid-objection-to-the-application-is-filed	20	(c) the proposed appropriation is a reasonable use.
21	according-to-this-part; that the following criteria are met:	21	Such a finding shall be based on a consideration of the
22	(a) there are unappropriated waters in the source of	22	following:
23	supply:	23	(i) the existing demands on the state water supply, as
24	(i) at times when the water can be put to the use	24	well as projected demands such as reservations of water for
25	proposed by the applicant;	25	future beneficial purposes, including municipal water
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	Montana Legislative Council		

THIRD READING

supplies, irrigation systems, and minimum streamflows for
 the protection of existing water rights and aquatic life;

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

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

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

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

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

15 (3) (a) The state of Montana has long recognized the 16 importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water 17 18 requirements, including requirements for reserved water rights held by the United States for federal reserved lands 19 and in trust for the various Indian tribes within the 20 21 state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the 22 23 out-of-state transportation and use of its public waters are 24 not in conflict with the public welfare of its citizens or 25 the conservation of its waters, the criteria in this HB 0542/02

1 subsection (3) must be met before out-of-state use may
2 occur.

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

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

10 (ii) the proposed out-ot-state use of water is not 11 contrary to water conservation in Montana; and

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

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

19 (i) whether there are present or projected water20 shortages within the state of Montana;

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

24 (iii) the supply and sources of water available to the25 applicant in the state where the applicant intends to use

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1 the water; and

2 (iv) the demands placed on the applicant's supply in3 the state where the applicant intends to use the water.

4 (d) When applying for a permit or a lease to withdraw 5 and transport water for use outside the state, the applicant 6 shall submit to and comply with the laws of the state of 7 Montana governing the appropriation, lease, and use of 8 water.

(4) To meet the clear--and--convincing SUBSTANTIAL 9 CREDIBLE evidence standard in this section, the applicant 10 shall submit independent hydrologic or other evidence, 11 INCLUDING WATER SUPPLY DATA, FIELD REPORTS, AND OTHER 12 INFORMATION DEVELOPED BY THE DEPARTMENT, THE U.S. GEOLOGICAL 13 SURVEY, OR THE U.S. SOIL CONSERVATION SERVICE AND OTHER 14 15 SPECIFIC FIELD STUDIES, demonstrating that the criteria are 16 met.

17 (5) An appropriation, diversion, impoundment, use, 18 restraint, or attempted appropriation, diversion, 19 impoundment, use, or restraint contrary to the provisions of 20 this section is invalid. No An officer, agent, agency, or employee of the state may not knowingly permit, aid, or 21 22 assist in any manner such an unauthorized appropriation, 23 diversion, impoundment, use, or other restraint. No A person 24 or corporation may not, directly or indirectly, personally or through an agent, officer, or employed, attempt to 25

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appropriate, divert, impound, use, or otherwise restrain or
 control waters within the boundaries of this state except
 in accordance with this section."

4 <u>NEW SECTION.</u> Section 2. Extension of authority. Any 5 existing authority to make rules on the subject of the 6 provisions of {this act} is extended to the provisions of 7 {this act}.

8 <u>NEW SECTION.</u> Section 3. Effective date. [This act] is
9 effective on passage and approval.

-End-

# SENATE STANDING COMMITTEE REPORT

March 20, 1989

MR. PRESIDENT: We, your committee on Agriculture, Livestock, and Irrigation, having had under consideration HB 542 (third reading copy -- blue), respectfully report that HB 542 be amended and as so amended be concurred in: Sponsor: Guthrie (Aklestad) 1. Title, line 8. Following: "FILED:" "CHANGING THE BURDEN OF PROOF FROM SUBSTANTIAL CREDIBLE Insert: EVIDENCE TO CLEAR AND CONVINCING EVIDENCE FOR CERTAIN WATER PERMIT CRITERIA IF A VALID OBJECTION TO THE APPLICATION IS FILED;" 2. Title, lines 10 and 11. Following: "CONVINCING" Strike: "SUBSTANTIAL CREDIBLE" Insert: "CLEAR AND CONVINCING" 3. Page 1, line 21.

Following: "<u>part,</u>" Insert: ", or by clear and convincing evidence if a valid objection to the application is filed according to this part,"

4. Page 5, lines 9 and 10. Following: "convincing" on line 9 Strike: "SUBSTANTIAL CREDIBLE" Insert: "clear and convincing"

AND AS AMENDED BE CONCURRED IN

Signed:

Beck.

HB 541

SENATE

March 22, 1989 9:58 am

Mr. Chairman: I move to amend HB 542 (third reading copy -- blue)
as follows:

1. Strike: The Senate Committee on Agriculture, Livestock, and Irrigation amendments to HB 542 (third reading copy -- blue) dated March 20, 1989, in their entirety

ADOPT

REJECT

Signed: Mazurek

SENATE HB 54 2

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AS AMENDED

REFERENCE BILL

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	1	HOUSE BILL NO. 542	1	IP-A-VALID-OBJECTION-TO-THE-APPLICATION-IS-PILED-ACCORDING
4       4         5       A BILL POR AN ACT ENTITLED: "AN ACT EMANGING-THE-BURDEN-OP       6         6       PROOPFRONSUBSTANTIAGCREBIBLEEVIDENCE-TOCBEARAND       6         7       GONVINCING-EVIDENCE-FOR-EBRAIN-NATER-PERMIT-CRITERIAIPA       7         8       VALUEOBJECTION-TOTHE-APPLICATION-IS-PIRATE-CRITERIAIPA       7         9       BURDEN-OF-PROOF-FROM-SUBSTANTIAGCREDIBLE-EVIDENCE-TOCBEAR       7         10       AND-CONVINCING-EVIDENCE-TOTHE-APPLICATION-IS-PIRATE-CRITERIAIP       8         10       AND-CONVINCING-EVIDENCE-TOTHE-APPLICATION-IS-PIRATE-CRITERIAIP       8         11       AND-CONVINCING-EVIDENCE-TOTHE-APPLICATION-IS-PIRATE-CRITERIAIP       10         12       AND-CONVINCING-EVIDENCE-TO-THE-APPLICATION-IS-PIRATE-CRITERIAIP       10         13       EVIDENCE TO TO THE APPLICATION SUBMIT INDEPENDENT       12       be adversely affected;         13       EVIDENCE TO NEET THE CHARA-NAD-ONVINCING SUBSTANTIAL CREDIBLE EVIDENCE       11       (b) the proposed means of diversion, construction, and         14       GREDHILE CHARA-NAD-ONVINCING SUBSTANTIAL CREDIBLE EVIDENCE       11       (c) the proposed use of vater is a beneficial use;         15       (d) the proposed use of vater is a beneficial use;       15       (e) the proposed use of vater is a beneficial use;         16       INNE	2	INTRODUCED BY GUTHRIE, AKLESTAD, HAYNE, WESTLAKE,	2	TO-THIS-PART, that the following criteria are met:
A BILL POR AN ACT ENTITLED: "AN ACT CHANGING-THE-BURDENOP       (i) at times when the water can be put to the use         PROOPPROMSUBSTANTIALCREDIBLEEVIDENCETOCREARAND       (ii) at times when the water can be put to the use         PROOPPROM-SUBSTANTIALCREDIBLEEVIDENCETOCREARAND       (ii) at times when the water can be put to the use         PROOPPROM-SUBSTANTIALCREDIBLEEVIDENCETOCREARAND       (ii) at times when the water can be put to the use         PROOPPROM-SUBSTANTIALCREDIBLEEVIDENCETOCREARAND       (ii) at times when the water can be put to the use         PROOPPROM-SUBSTANTIALCREDIBLEEVIDENCETOCREARAND       (iii) throughout the period during which the applicant seeks to appropriate;         ND-CONVINCING-EVIDENCEFOR-CERTAIN WATER-PERMIT-CRITERIAIP       10       seeks to appropriate, the amount requested is available;         ND-CONVINCING-EVIDENCE-TO-TRE-APPLICATION-IS-PHEDF, REQUIRING THE       11       be adversely affected;         III       A-VALSO-OBJECTION TO-THE-APPLICATION INDECENCE       12       be adversely affected;         III       EVIDENCE TO NEET THE CREARAND PROVIDING AN       13       (c) the proposed means of diversion, construction, and         CREDIBLE CHEAR-AND-CONVINCING SUBSTANTIAL CREDIBLE EVIDENCE       14       operation of the appropriation works are adequate;         III       FINENCE TO NEET THE CREAR-AND PROVIDING AN       15       (d) the proposed use of water is a beneficial use; <t< td=""><td>3</td><td>CAMPBELL, COBB, ELLIOTT, WILLIAMS, DEMARS, KOEHNKE</td><td>3</td><td>(a) there are unappropriated waters in the source of</td></t<>	3	CAMPBELL, COBB, ELLIOTT, WILLIAMS, DEMARS, KOEHNKE	3	(a) there are unappropriated waters in the source of
6       PROOFFROMSUBSTANFIADCREDIBLEEVIDENCEB0CELEARAND       6       proposed by the applicant;         7       CONVINCING-EVIDENCE-FOR-CERTAIN MATER-PERMIT-CHITERIA-IPA       7       (ii) in the amount the applicant seeks to appropriate;         8       VALIDOBJECTIONTOTHE-APPLICATION-IS-FILED; CHANGING-THE       8       and         9       BURDEN-OF-PROOF-FROM-SUBSTANTIAL-CREDIBLE-EVIDENCE-TOCLEAR       9       (iii) throughout the period during which the applicant         10       AND-CONVINCING-EVIDENCE-FOR-CERTAIN WATER-FERMIT-CHITERIA-IP       10       seeks to appropriate, the amount requested is available;         11       A-VALID-OBJECTION-TO-THE-APPLICATION-IS-FILED; CELEAR       9       (iii) throughout the period during which the applicant         10       AND-CONVINCING-EVIDENCE-FOR-CERTAIN WATER-FERMIT-CHITERIA-IP       10       seeks to appropriate, the amount requested is available;         11       A-VALID-OBJECTION-TO-THE-APPLICATION-IS-FILED; REQUIRING THE       11       (b) the vater rights of a prior appropriator will not         12       AN APPLICANT FOR A WATER USE PERMIT TO SUBMIT INDEPENDENT       12       be adversely affected;         13       EVIDENCE TO MEET THE GEBARAND-CONVINCING SUBSTANTIAL CHEDIBLE EVIDENCE       13       (c) the proposed use of water is a beneficial use;         14       GREDIBLE EFFECTIVE DATE."       INCA; AND PROVIDING AN       15       (d) the p	4		4	supply:
7       CONVINCING-EVIDENCE-POR-CERTAIN-WATER-PERMIT-CHITERIAIPA       7       (ii) in the amount the applicant seeks to appropriate;         8       VALIDOBJBETIONTOTHE-APPLICATION-IS-PILED; CHANGING-THE       8       and         9       BURBEN-OF-PROOF-PROM-SUBSTANTIAL-CREDIBLE-EVIDENCE-TOCLEAR       9       (iii) throughout the period during which the applicant         10       AND-CONVINCING-EVIDENCE-FOR-CERTAIN-WATER-PERMIT-CHITERIA-IP       10       seeks to appropriate, the amount requested is available;         11 <u>A-VALID-OBJBETION-TO-THE-APPLICATION-IS-FILED; REQUIRING THE</u> 11       (b) the water rights of a prior appropriator will not         12 <u>AN APPLICANT FOR_A WATER USE PERMIT</u> TO SUBALT INDEPENDENT       12       be adversely affected;         13       EVIDENCE TO MEET THE CHARAAND-CONVINCING SUBSTANTIAL CREDIBLE EVIDENCE       14       operation of the appropriation works are adequate;         14 <u>CREDIBLE CEBAR-AND-CONVINCING SUBSTANTIAL CREDIBLE EVIDENCE</u> 14       operation of the appropriation works are adequate;         15       STANDARD, AMENDING SECTION B5-2-311, MCA; AND PROVIDING AN       15       (d) the proposed use of water is a beneficial use;         16       INMEDIATE EFFECTIVE DATE."       16       (e) the proposed use of developments for which a permit         17       18       BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:       18 <td< td=""><td>5</td><td>A BILL FOR AN ACT ENTITLED: "AN ACT CHANGING-THE-BURDENOF</td><td>5</td><td>(i) at times when the water can be put to the use</td></td<>	5	A BILL FOR AN ACT ENTITLED: "AN ACT CHANGING-THE-BURDENOF	5	(i) at times when the water can be put to the use
8       VALIDOBJECTIONTOTHE-APPLICATION-IS-PIEED; CHANGING-THE       8       and         9       BURDEN-OF-PROM-SUBSTANTIAL-CREDIBLE-EVIDENCE-TOCEEAR       9       (iii) throughout the period during which the applicant         10       AND-CONVINCING-EVIDENCE-TOCEEAR       9       (iii) throughout the period during which the applicant         11       A-VALID-OBJECTION-TO-THE-APPLICATION-IS-PIEED; REQUIRING THE       10       seeks to appropriate, the amount requested is available;         11       A-VALID-OBJECTION TO-THE-APPLICATION-IS-PIEED; REQUIRING THE       11       (b) the water rights of a prior appropriator will not         12       AN APPLICANT FOR A WATER USE PERMIT TO SUBMIT INDEPENDENT       12       be adversely affected;         13       EVIDENCE TO MEET THE CEBARAND-CONVINCING SUBSTANTIAL CREDIBLE EVIDENCE       13       (c) the proposed means of diversion, construction, and         14       CREDIBLE GLEAR-AND-CONVINCING SUBSTANTIAL CREDIBLE EVIDENCE       14       operation of the appropriation works are adequate;         15       STANDARD; AMENDING SECTION B5-2-311, MCA; AND PROVIDING AN       15       (d) the proposed use of water is a beneficial use;         16       INMEDIATE EFFECTIVE DATE."       16       (e) the proposed use of developments for which a permit         18       BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:       18       has been issued or for which water has been reserve	6	PROOFFROMSUBSTANTIALCREDIBLE-EVIDENCETOCLEARAND	6	proposed by the applicant;
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14 <u>EREDIBLE</u> <u>Chear-AND-GONVINCING</u> <u>SUBSTANTIAL CREDIBLE</u> EVIDENCE         15       STANDARD; AMENDING SECTION B5-2-311, MCA; AND PROVIDING AN       15       (d) the proposed use of water is a beneficial use;         16       INMEDIATE EFFECTIVE DATE."       16       (e) the proposed use will not interfere unreasonably         17       with other planned uses or developments for which a permit         18       BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:       18         19       Section 1. Section 85-2-311, MCA, is amended to read:       19         20       "85-2-311. Criteria for issuance of permit. (1) Except       20         21       as provided in subsections (2) through(4) and (3), the       21         22       department shall issue a permit if the applicant proves by       22         23       substantial credible evidence <u>r-or-byclearandconvincing</u> 23         24       (b) the rights of a prior appropriator will not be	12	AN APPLICANT FOR A WATER USE PERMIT TO SUBMIT INDEPENDENT	12	be adversely affected;
15       STANDARD; AMENDING SECTION 85-2-311, MCA; AND PROVIDING AN       15       (d) the proposed use of water is a beneficial use;         16       IMMEDIATE EFFECTIVE DATE."       16       (e) the proposed use will not interfere unreasonably         17       with other planned uses or developments for which a permit         18       BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:       18       has been issued or for which water has been reserved.         19       Section 1. Section 85-2-311, MCA, is amended to read:       19       (2) The department may not issue a permit for an         20       "85-2-311. Criteria for issuance of permit. (1) Except       20       appropriation of 4,000 or more acce-feet of water a year and         21       as provided in subsections (2) through(4) and (3), the       21       5.5 or more cubic feet per second of water unless the         22       applicant proves by clear and convincing evidence that:       23       (a) the criteria in subsection (1) are met;         23       evidenceifavalid-objection-to-the-application-is-filed       24       (b) the rights of a prior appropriator will not be	13	EVIDENCE TO MEET THE CHEARANDCONVINCING SUBSTANTIAL	13	(c) the proposed means of diversion, construction, and
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18       BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:       18       has been issued or for which water has been reserved.         19       Section 1. Section 85-2-311, MCA, is amended to read:       19       (2) The department may not issue a permit for an         20       "85-2-311. Criteria for issuance of permit. (1) Except       20       appropriation of 4,000 or more acre-feet of water a year and         21       as provided in subsections (2) through-(4) and (3), the       21       5.5 or more cubic feet per second of water unless the         22       department shall issue a permit if the applicant proves by       22       applicant proves by clear and convincing evidence that:         23       substantial credible evidence_ror-by-clearandconvincing       23       (a) the criteria in subsection (1) are met;         24       evidenceifavalid-objection-to-the-application-is-filed       24       (b) the rights of a prior appropriator will not be	16	IMMEDIATE EFFECTIVE DATE."	16	(e) the proposed use will not interfere unreasonably
19Section 1. Section 85-2-311, MCA, is amended to read:19(2) The department may not issue a permit for an20*85-2-311. Criteria for issuance of permit. (1) Except20appropriation of 4,000 or more acre-feet of water a year and21as provided in subsections (2) through(4) and (3), the215.5 or more cubic feet per second of water unless the22department shall issue a permit if the applicant proves by22applicant proves by clear and convincing evidence that:23substantial credible evidenceifavalid-objection-to-the-application-is-filed24(b) the rights of a prior appropriator will not be	17		17	with other planned uses or developments for which a permit
<ul> <li>*85-2-311. Criteria for issuance of permit. (1) Except</li> <li>as provided in subsections (2) through(4) and (3), the</li> <li>department shall issue a permit if the applicant proves by</li> <li>substantial credible evidence<u>r-or-byclearandconvincing</u></li> <li>(a) the criteria in subsection (1) are met;</li> <li>evidenceif-avalid-objection-to-the-application-is-filed</li> <li>(b) the rights of a prior appropriator will not be</li> </ul>	18	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	18	has been issued or for which water has been reserved.
21       as provided in subsections (2) through(4) and (3), the       21       5.5       or more cubic feet per second of water unless the         22       department shall issue a permit if the applicant proves by       22       applicant proves by clear and convincing evidence that:         23       substantial credible evidenceifandconvincing       23       (a) the criteria in subsection (1) are met;         24       evidenceifavalid-objection-to-the-application-is-filed       24       (b) the rights of a prior appropriator will not be	19	Section 1. Section 85-2-311, MCA, is amended to read:	19	(2) The department may not issue a permit for an
21       as provided in subsections (2) chrodyn (4) and (5), che         22       department shall issue a permit if the applicant proves by       22       applicant proves by clear and convincing evidence that:         23       substantial credible evidence	20	<b>*85-2-311. Criteria for issuance of permit.</b> (1) Except	20	appropriation of 4,000 or more acre-feet of water a year and
<ul> <li>23 substantial credible evidence<u>7-or-byclearandconvincing</u></li> <li>23 <u>evidenceifavalid-objection-to-the-application-is-filed</u></li> <li>24 <u>evidenceifavalid-objection-to-the-application-is-filed</u></li> <li>24 (b) the rights of a prior appropriator will not be</li> </ul>	21	as provided in subsections (2) through $-+$ (4) and (3), the	21	5.5 or more cubic feet per second of water unless the
24 evidenceifavalid-objection-to-the-application-is-filed 24 (b) the rights of a prior appropriator will not be	22	department shall issue a permit if the applicant proves by	22	applicant proves by clear and convincing evidence that:
	23	substantial credible evidence or -by clear and convincing	23	<ul><li>(a) the criteria in subsection (1) are met;</li></ul>
	24	evidenceifavalid-objection-to-the-application-is-filed	24	(b) the rights of a prior appropriator will not be
25 according-to-this-part;;-OR-BY-CEEAR-AND-CONVINCING-EVIDENCE 25 adversely affected;	25	according-to-this-part;;-OR-BY-CEEAR-AND-CONVINCING-EVIDENCE	25	adversely affected;

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

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

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

(3) (a) The state of Montana has long recognized the
importance of conserving its public waters and the necessity
to maintain adequate water supplies for the state's water
requirements, including requirements for reserved water
rights held by the United States for federal reserved lands

and in trust for the various Indian tribes within the 1 state's boundaries. Although the state of Montana also 2 3 recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are Δ not in conflict with the public welfare of its citizens or 5 the conservation of its waters, the criteria in this 6 subsection (3) must be met before out-of-state use may 7 8 occur.

9 (b) The department may not issue a permit for the 10 appropriation of water for withdrawal and transportation for 11 use outside the state unless the applicant proves by clear 12 and convincing evidence that:

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

16 (ii) the proposed out-of-state use of water is not17 contrary to water conservation in Montana; and

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

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

(i) whether there are present or projected water

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shortages within the state of Montana;

2 (ii) whether the water that is the subject of the
3 application could feasibly be transported to alleviate water
4 shortages within the state of 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 in9 the state where the applicant intends to use the water.

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

(4) To meet the clear--and--convincing SUBSTANTIAL 15 16 EREDIBLE ELEAR-AND-CONVINCING SUBSTANTIAL CREDIBLE evidence 17 standard in this section, the applicant shall submit 18 independent hydrologic or other evidence, INCLUDING WATER 19 SUPPLY DATA, FIELD REPORTS, AND OTHER INFORMATION DEVELOPED 20 BY THE DEPARTMENT, THE U.S. GEOLOGICAL SURVEY, OR THE U.S. 21 SOIL CONSERVATION SERVICE AND OTHER SPECIFIC FIELD STUDIES, 22 demonstrating that the criteria are met. 23 (5) An appropriation, diversion, impoundment, use,

restraint, or attempted appropriation, diversion,impoundment, use, or restraint contrary to the provisions of

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this section is invalid. No An officer, agent, agency, or 1 2 employee of the state may not knowingly permit, aid, or 3 assist in any manner such an unauthorized appropriation. 4 diversion, impoundment, use, or other restraint. No A person 5 or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to 6 appropriate, divert, impound, use, or otherwise restrain or 7 8 control waters within the boundaries of this state except 9 in accordance with this section."

10 <u>NEW SECTION.</u> Section 2. Extension of authority. Any 11 existing authority to make rules on the subject of the 12 provisions of [this act] is extended to the provisions of 13 [this act].

14 <u>NEW SECTION.</u> Section 3. Effective date. (This act) is

15 effective on passage and approval.

-End-

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