

HOUSE BILL 584

Introduced by Ream, et al.

2/04	Introduced
2/06	Referred to Natural Resources
2/10	Hearing
2/11	Committee Report--Bill Passed
2/14	2nd Reading Passed
2/16	3rd Reading Passed

Transmitted to Senate

2/17	Referred to Agriculture, Livestock & Irrig.
3/01	Hearing Died in Committee

1 HOUSE BILL NO. 584
2 INTRODUCED BY Ream Yellowtail
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT ISSUANCE
5 OF A WATER USE PERMIT MAY NOT INTERFERE UNREASONABLY WITH
6 THE QUALITY OF AN APPROPRIATOR'S DOMESTIC WATER SUPPLY OR
7 THE ABILITY OF AN OBJECTOR TO COMPLY WITH THE REQUIREMENTS
8 OF A WATER QUALITY DISCHARGE PERMIT; AMENDING SECTIONS
9 85-2-308 AND 85-2-311, MCA; AND PROVIDING AN IMMEDIATE
10 EFFECTIVE DATE."

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

13 **Section 1.** Section 85-2-308, MCA, is amended to read:

14 "85-2-308. **Objections.** (1) An objection to an
15 application must be filed by the date specified by the
16 department under 85-2-307(2).

17 (2) The objection must state the name and address of
18 the objector and facts tending to show that there are no
19 unappropriated waters in the proposed source, that the
20 proposed means of appropriation are inadequate, that the
21 property, water rights, or interests of the objector would
22 be adversely affected by the proposed appropriation, that
23 the proposed use of water is not a beneficial use, or that
24 the proposed use will interfere unreasonably with other
25 planned uses or developments for which a permit has been

1 issued or for which water has been reserved, that the
2 proposed water use will interfere unreasonably with the
3 quality of an appropriator's domestic water supply, or that
4 the proposed water use will interfere unreasonably with the
5 ability of a person to comply with the requirements of a
6 water quality discharge permit obtained in accordance with
7 Title 75, chapter 5, part 4."

8 **Section 2.** Section 85-2-311, MCA, is amended to read:

9 "85-2-311. **Criteria for issuance of permit.** (1) Except
10 as provided in subsections (2) ~~through (4)~~ and (3), the
11 department shall issue a permit if the applicant proves by
12 substantial credible evidence that the following criteria
13 are met:

14 (a) there are unappropriated waters in the source of
15 supply:

16 (i) at times when the water can be put to the use
17 proposed by the applicant;

18 (ii) in the amount the applicant seeks to appropriate;
19 and

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

22 (b) the water rights of a prior appropriator will not
23 be adversely affected;

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

(d) the proposed use of water is a beneficial use;

(e) the proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved;

(f) the proposed use will not interfere unreasonably with the quality of an appropriator's domestic water supply; and

(g) the proposed use will not interfere unreasonably with the ability of an objector to comply with the requirements of a water quality discharge permit obtained in accordance with Title 75, chapter 5, part 4.

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

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

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

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

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

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

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

(v) the effects on private property rights by any 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 state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the criteria in this subsection (3) must be met before out-of-state use may

1 occur.

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

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

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

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

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

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

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

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

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

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

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

20 NEW SECTION. **Section 3.** Extension of authority. Any
21 existing authority to make rules on the subject of the
22 provisions of [this act] is extended to the provisions of
23 [this act].

24 NEW SECTION. **Section 4.** Effective date. [This act] is
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APPROVED BY COMM. ON
NATURAL RESOURCES

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