

HOUSE BILL NO. 395

INTRODUCED BY FOSTER, GROSFIELD, BARTLETT

IN THE HOUSE

JANUARY 30, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
	FIRST READING.
FEBRUARY 17, 1993	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
FEBRUARY 18, 1993	PRINTING REPORT.
FEBRUARY 19, 1993	SECOND READING, DO PASS.
FEBRUARY 20, 1993	ENGROSSING REPORT.
FEBRUARY 22, 1993	THIRD READING, PASSED. AYES, 88; NOES, 11.
FEBRUARY 23, 1993	TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 1, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
	FIRST READING.
MARCH 24, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 26, 1993	SECOND READING, CONCURRED IN.
MARCH 27, 1993	THIRD READING, CONCURRED IN. AYES, 45; NOES, 3.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 1, 1993	SECOND READING, AMENDMENTS CONCURRED IN.
APRIL 2, 1993	THIRD READING, AMENDMENTS CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 395  
2 INTRODUCED BY Foster  
3 Garfield Bartlett  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TEMPORARILY CLOSING THE  
5 UPPER MISSOURI RIVER BASIN TO FURTHER APPROPRIATIONS, EXCEPT  
6 APPROPRIATIONS FOR GROUND WATER, NONCONSUMPTIVE WATER USE,  
7 AND STORAGE PROJECTS; AND PROVIDING AN IMMEDIATE EFFECTIVE  
8 DATE AND AN APPLICABILITY DATE."

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

11 NEW SECTION. Section 1. Definitions. Unless the  
12 context requires otherwise, in [sections 1 and 2], the  
13 following definitions apply:

14 (1) "Application" means an application for a beneficial  
15 water use permit pursuant to 85-2-302 or a water reservation  
16 pursuant to 85-2-316.

17 (2) "Ground water" means water that is beneath the land  
18 surface or beneath the bed of a stream, lake, reservoir, or  
19 other body of surface water and that is not immediately or  
20 directly connected to surface water.

21 (3) "Nonconsumptive use" means a beneficial use of  
22 water that does not cause a reduction in the source of  
23 supply and in which substantially all of the water returns  
24 without delay to the source of supply, causing little or no  
25 disruption in stream conditions.

1 (4) "Upper Missouri River basin" means the drainage  
2 area of the Missouri River and its tributaries above Morony  
3 dam.

4 NEW SECTION. Section 2. Basin closure -- exceptions.

5 (1) As provided in 85-2-319 and subject to the provisions of  
6 subsection (2) of this section, the department and the board  
7 may not process or grant an application for a permit to  
8 appropriate water or for a reservation to reserve water  
9 within the upper Missouri River basin during the period from  
10 [the effective date of this act] until the final decrees  
11 have been issued in accordance with part 2 of this chapter  
12 for all of the subbasins of the upper Missouri River basin.

13 (2) The provisions of subsection (1) do not apply to:

14 (a) an application for a permit to appropriate ground  
15 water;

16 (b) an application for a permit to appropriate water  
17 for a nonconsumptive use;

18 (c) an application to store water during high spring  
19 flows; or

20 (d) temporary emergency appropriations as provided for  
21 in 85-2-113(3).

22 NEW SECTION. Section 3. Codification instruction.  
23 [Sections 1 and 2] are intended to be codified as an  
24 integral part of Title 85, chapter 2, part 3, and the  
25 provisions of Title 85, chapter 2, part 3, apply to

1 [sections 1 and 2].

2 NEW SECTION. **Section 4. Effective date.** [This act] is  
3 effective on passage and approval.

4 NEW SECTION. **Section 5. Applicability.** [This act]  
5 applies to all applications received by the department of  
6 natural resources and conservation after [the effective date  
7 of this act].

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15


In compliance with a written request, there is hereby submitted a Fiscal Note for HB0395, as introduced.

**DESCRIPTION OF PROPOSED LEGISLATION:** The bill proposes a temporary legislative closure for the 13 sub-basins of the Upper Missouri River Basin drainage area and its tributaries above Morony Dam at Great Falls, Montana until the final decrees have been issued in all 13 sub-basins. The closure would prohibit the Department or Board of Natural Resources and Conservation from processing or granting any applications for beneficial water use permit for consumptive surface water uses or reserved water. The closure would not apply to permit applications for groundwater, nonconsumptive uses, water stored during high spring flows, or temporary emergency appropriations.

**ASSUMPTIONS:**

1. This proposed bill essentially closes the 13 Upper Missouri River sub-basins to any consumptive surface water permit or reserved water applications with certain exceptions.
2. The Department of Natural Resources and Conservation (DNRC) received and issued 534 (76%) consumptive and 166 (24%) nonconsumptive surface water permits during the period July 1, 1973 to January 29, 1993 for an annual average of 36 per year.
3. For the first 10 years of Montana's permit system from July 1, 1973 to December 31, 1982, DNRC issued 340 (90.4%) consumptive and 36 (9.6%) nonconsumptive surface water permits for an average per year for the 10 year period of 37.6.
4. For the second 10 years from January 1, 1983 to January 29, 1993, DNRC issued 194 (60%) consumptive and 130 (40%) nonconsumptive surface water permits for an average per year for this 10 year period of 32.
5. For the past three calendar years (1990-1992), DNRC issued 16 (25.8%) consumptive and 46 (74.2%) nonconsumptive surface water permits for an average per year for this three year period of 20.6.
6. In calendar year 1992, DNRC issued 8 consumptive and 17 nonconsumptive permits in this basin, which is 5% of the total permits issued state wide in 1992.
7. Clearly, the trend over the past 20 years for issuance of water use permits in this basin has shifted from a high percentage of consumptive uses in the 1970s and early 1980s to a high percentage of nonconsumptive uses during the 1980s and early 1990s. This trend reversal is primarily due to the lack of water for new uses, water quality problems in the basin, and objections filed against the applications by Montana Power Company and the U.S. Bureau of Reclamation. If a consumptive permit is issued, the Bureau of Reclamation also usually required that the applicant purchase a temporary water use contract to offset any hydropower generation revenue losses.
8. Should this bill be enacted, the DNRCs workload in the Upper Missouri River Basin would essentially remain the same as it has been during the past three years.

**FISCAL IMPACT:** None.

  
DAVID LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

 2-5-93  
MIKE FOSTER, PRIMARY SPONSOR      DATE

Fiscal Note for HB0395, as introduced

**HB 395**

APPROVED BY COMM. ON  
NATURAL RESOURCES1  
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APPROPRIATIONS FOR GROUND WATER, NONCONSUMPTIVE WATER USE,  
AND STORAGE PROJECTS; AND PROVIDING AN IMMEDIATE EFFECTIVE  
DATE AND AN APPLICABILITY DATE."

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context requires otherwise, in [sections 1 and 2], the  
following definitions apply:

(1) "Application" means an application for a beneficial  
water use permit pursuant to 85-2-302 or a water reservation  
pursuant to 85-2-316.

(2) "Ground water" means water that is beneath the land  
surface or beneath the bed of a stream, lake, reservoir, or  
other body of surface water and that is not immediately or  
directly connected to surface water.

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(4) "Upper Missouri River basin" means the drainage  
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NEW SECTION. **Section 2. Basin closure -- exceptions.**

(1) As provided in 85-2-319 and subject to the provisions of  
subsection (2) of this section, the department and the board  
may not process or grant an application for a permit to  
appropriate water or for a reservation to reserve water  
within the upper Missouri River basin during the period from  
[the effective date of this act] until the final decrees  
have been issued in accordance with part 2 of this chapter  
for all of the subbasins of the upper Missouri River basin.

(2) The provisions of subsection (1) do not apply to:

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[Sections 1 and 2] are intended to be codified as an  
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-End-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
March 24, 1993

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration House Bill No. 395 (first reading copy -- blue), respectfully report that House Bill No. 395 be amended as follows and as so amended be concurred in.

Signed: Don Bianchi  
Senator Don Bianchi, Chair

That such amendments read:

1. Title, line 6.

Following: "WATER USE,"

Insert: "DOMESTIC, MUNICIPAL, OR STOCK USE,"

2. Page 2.

Following: line 17

Insert: "(c) an application for a permit to appropriate water for domestic, municipal, or stock use;"

Renumber: subsequent subsections

-END-

AW  
m Amd. Coord.  
Sec. of Senate

Grosfield  
Senator Carrying Bill

SENATE  
HB 395  
661205SC.San

## HOUSE BILL NO. 395

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(C) AN APPLICATION FOR A PERMIT TO APPROPRIATE WATER FOR DOMESTIC, MUNICIPAL, OR STOCK USE;

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