

SENATE BILL NO. 383

INTRODUCED BY GROSFIELD, GILBERT, ANDERSON

IN THE SENATE

FEBRUARY 12, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON AGRICULTURE, LIVESTOCK, & IRRIGATION. FIRST READING.
FEBRUARY 17, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 18, 1993	PRINTING REPORT. SECOND READING, DO PASS.
FEBRUARY 19, 1993	ENGROSSING REPORT. THIRD READING, PASSED. AYES, 50; NOES, 0. TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 23, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON AGRICULTURE, LIVESTOCK, & IRRIGATION. FIRST READING.
MARCH 10, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 13, 1993	SECOND READING, CONCURRED IN.
MARCH 16, 1993	THIRD READING, CONCURRED IN. AYES, 87; NOES, 12.
MARCH 17, 1993	RETURNED TO SENATE.

IN THE SENATE

MARCH 18, 1993	RECEIVED FROM HOUSE. SENT TO ENROLLING. REPORTED CORRECTLY ENROLLED.
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1 *Senate* BILL NO. *383*
 2 INTRODUCED BY *Groffed Dillert*
 3 *Dillon*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT MODIFYING THE ANNUAL
 5 REPORT REQUIREMENTS FOR THE WATER LEASING STUDY; REMOVING
 6 THE PROVISION LIMITING ELIGIBLE STREAMS TO 10 STREAM
 7 REACHES; AUTHORIZING THE USE OF RIVER RESTORATION FUNDS FOR
 8 WATER LEASING; AMENDING SECTIONS 85-2-436, 85-2-437,
 9 87-1-257, AND 87-1-610, MCA; AND PROVIDING AN EFFECTIVE
 10 DATE."

11
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 **Section 1.** Section 85-2-436, MCA, is amended to read:

14 "85-2-436. (Temporary) Water leasing study. (1) The
 15 department of fish, wildlife, and parks and the department,
 16 in consultation with the water policy committee, shall
 17 conduct and coordinate a study that, at a minimum:

18 (a) provides the following data for each designated
 19 stream reach and each pilot lease entered into under
 20 subsection (2):

21 (i) the length of the stream reach and how it is
 22 determined;

23 (ii) technical methods and data used to determine
 24 critical streamflow or volume needed to preserve fisheries;

25 (iii) legal standards and technical data used to

1 determine and substantiate the amount of water available for
 2 instream flows through leasing of existing rights;

3 (iv) contractual parameters, conditions, and other steps
 4 taken to ensure that each lease in no way harms other
 5 appropriators, particularly if the stream is one that
 6 experiences natural dewatering; and

7 (v) methods and technical means used to monitor use of
 8 water under each lease;

9 (b) based on the data provided under subsection (1)(a),
 10 develops a complete model of a water lease and lease
 11 authorization that includes a step-by-step explanation of
 12 the process from initiation to completion.

13 (2) For purposes of undertaking the study described in
 14 subsection (1) and as authorized by law, the department of
 15 fish, wildlife, and parks and the department may engage in
 16 the activities described in this subsection. For purposes of
 17 this study, this section is the exclusive means by which the
 18 department of fish, wildlife, and parks may seek to change
 19 an appropriation right to an instream flow purpose.

20 (a) The department of fish, wildlife, and parks, with
 21 the consent of the commission, may lease existing rights for
 22 the purpose of maintaining or enhancing streamflows for the
 23 benefit of fisheries in stream reaches determined eligible
 24 by the board pursuant to 85-2-437.

25 (b) Upon receipt of an application for a lease from the

1 department of fish, wildlife, and parks, the department
2 shall publish notice of the application as provided in
3 85-2-307. Parties who believe they may be adversely affected
4 by the proposed lease may file an objection as provided in
5 85-2-308. A lease may not be approved until all objections
6 are resolved. After resolving all objections filed under
7 85-2-308, the department shall authorize a lease of an
8 existing right for the purpose of maintaining or enhancing
9 streamflows for the benefit of fisheries if the applicant
10 submits a complete application and meets the requirements of
11 85-2-402.

12 (c) The application for a lease authorization must
13 include specific information on the length and location of
14 the stream reach in which the streamflow must be maintained
15 or enhanced and must provide a detailed streamflow measuring
16 plan that describes the points where and the manner in which
17 the streamflow must be measured.

18 (d) The maximum quantity of water that may be leased is
19 the amount historically diverted by the lessor. However,
20 only the amount historically consumed, or a smaller amount
21 if specified by the department in the lease authorization,
22 may be used to maintain or enhance streamflows below the
23 lessor's point of diversion.

24 (e) The lease may not be issued for a term of more than
25 10 years, but it may be renewed once for up to 10 years,

1 except that a lease of water made available from the
2 development of a water conservation or storage project is
3 restricted to a term of not more than 20 years. Upon
4 receiving notice of a lease renewal, the department shall
5 notify other appropriators potentially affected by the lease
6 and shall allow 30 days for submission of new evidence of
7 adverse effects to other water rights. A lease authorization
8 is not required for a renewal unless an appropriator other
9 than an appropriator described in subsection (2)(i) submits
10 evidence of adverse effects to his the appropriator's rights
11 that has not been considered previously. If new evidence is
12 submitted, a lease authorization must be obtained according
13 to the requirements of 85-2-402.

14 (f) During the term of the lease, the department may
15 modify or revoke the lease authorization if an appropriator
16 other than an appropriator described in subsection (2)(i)
17 proves by substantial credible evidence that his the
18 appropriator's water right is adversely affected.

19 (g) The priority of appropriation for a lease under
20 this section is the same as the priority of appropriation of
21 the right that is leased.

22 (h) Neither a change in appropriation right nor any
23 other authorization is required for the reversion of the
24 appropriation right to the lessor's previous use.

25 (i) A person issued a water use permit with a priority

of appropriation after the date of filing of an application for a lease authorization under this section may not object to the exercise of the lease according to its terms or the reversion of the appropriation right to the lessor according to the lessor's previous use.

(j) The department of fish, wildlife, and parks shall pay all costs associated with installing devices or providing personnel to measure streamflows according to the measuring plan submitted under this section.

(3) (a) The department of fish, wildlife, and parks shall complete and submit to the board, commission, and water policy committee an annual study progress report by December 1 of each year. This report must include the applicable information listed in subsection (1) for each lease, a summary of stream reach designation activity under 85-2-437, and a summary of leasing activity on all designated streams. If the department of fish, wildlife, and parks has not leased additional water rights under this section by December 1 of any year, the department of fish, wildlife, and parks shall provide compelling justification for that fact in the study progress report.

(b) A final study report must be adopted by the board and commission and submitted to the water policy committee, which shall complete the final report by December 1, 1998.

(4) This section does not create the right for a person

to bring suit to compel the renewal of a lease that has expired. (Terminates June 30, 1999--sec. 4, Ch. 740, L. 1991.)"

Section 2. Section 85-2-437, MCA, is amended to read:

"85-2-437. (Temporary) Board designation of eligible stream reaches. (1) The department of fish, wildlife, and parks, with the consent of the commission, may apply to the board for designation of stream reaches for which water leasing to maintain or enhance streamflows pursuant to 85-2-436 may occur.

(2) The board may declare a stream reach eligible for leasing pursuant to 85-2-436 only if it finds that water leasing is necessary to maintain or enhance streamflows for fisheries.

~~(3) The board may designate no more than 10 stream reaches in the state where water leasing pursuant to 85-2-436 may occur if the department of fish, wildlife, and parks determines that a water lease cannot be reasonably obtained on a designated stream reach, the board may remove the designation from that stream reach and designate another stream reach pursuant to this section. (Terminates June 30, 1999--sec. 4, Ch. 740, L. 1991.)"~~

Section 3. Section 87-1-257, MCA, is amended to read:

"87-1-257. River restoration program. (1) The department shall administer a river restoration program.

(2) The program may consist of physical projects to improve rivers and their associated lands in order to conserve and enhance fish and wildlife habitat, including but not limited to the leasing of water rights under 85-2-436.

(3) The department shall work cooperatively with individuals, conservation districts, and state, local, private, tribal, and federal organizations to achieve the goals of the program and may contract with private organizations to implement specific river restoration projects.

(4) The department shall present projects to the local conservation district for review and recommendations and obtain any applicable permits.

(5) The department shall receive the consent of the landowner or lessee of any associated lands before initiating physical projects on these lands.

(6) No A project conducted under the program may not restrict or interfere with the exercise of any water right."

Section 4. Section 87-1-610, MCA, is amended to read:

"87-1-610. (Temporary) Contributions for leasing appropriation rights -- general spending authority. (1) The department may accept contributions from public or private entities for the purpose of leasing appropriation rights to maintain or enhance instream flows for the benefit of

fisheries.

(a) Any contributions accepted by the department under this section must be deposited in the fish and wildlife mitigation trust fund established in 87-1-611.

(b) The department shall expend money obtained under this section and deposited in the fish and wildlife mitigation trust fund exclusively to lease existing rights for the purpose of maintaining or enhancing instream flows for fisheries.

(2) The department may also expend other departmental funds to lease existing rights for the purpose of maintaining or enhancing instream flows for fisheries, including but not limited to departmental funds in the river restoration special revenue account established under 87-1-258. (Terminates June 30, 1999--sec. 4, Ch. 740, L. 1991.)"

NEW SECTION. Section 5. Effective date. [This act] is effective July 1, 1993.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0383, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION: An act modifying the annual report requirements for the water leasing study; removing the provision limiting eligible streams to 10 stream reaches; authorizing the use of river restoration funds for water leasing; and providing an effective date.

ASSUMPTIONS:

1. The river restoration program currently funds improvements to streams and rivers such as stream base fencing and water quality improvements.
2. There will be no change in the revenues or expenditures in the river restoration program.
3. Water leasing would compete with other types of projects to improve fish habitat in the future.

FISCAL IMPACT: None for the Department of Fish, Wildlife and Parks.

David Lewis 2-17-93
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Lorents Grosfield 2/17/93
LORENTS GROSFIELD, PRIMARY SPONSOR DATE
Fiscal Note for SB0383, as introduced
SB 383

APPROVED BY COMMITTEE
ON AGRICULTURE LIVESTOCK
& IRRIGATION

SENATE BILL NO. 383

INTRODUCED BY GROSFIELD, GILBERT, ANDERSON

A BILL FOR AN ACT ENTITLED: "AN ACT MODIFYING THE ANNUAL REPORT REQUIREMENTS FOR THE WATER LEASING STUDY; REMOVING REVISING THE PROVISION LIMITING ELIGIBLE STREAMS TO 10 20 STREAM REACHES; AUTHORIZING THE USE OF RIVER RESTORATION FUNDS FOR WATER LEASING; AMENDING SECTIONS 85-2-436, 85-2-437, 87-1-257, AND 87-1-610, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

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(a) provides the following data for each designated stream reach and each pilot lease entered into under subsection (2):

(i) the length of the stream reach and how it is determined;

(ii) technical methods and data used to determine critical streamflow or volume needed to preserve fisheries;

(iii) legal standards and technical data used to

determine and substantiate the amount of water available for instream flows through leasing of existing rights;

(iv) contractual parameters, conditions, and other steps taken to ensure that each lease in no way harms other appropriators, particularly if the stream is one that experiences natural dewatering; and

(v) methods and technical means used to monitor use of water under each lease;

(b) based on the data provided under subsection (1)(a), develops a complete model of a water lease and lease authorization that includes a step-by-step explanation of the process from initiation to completion.

(2) For purposes of undertaking the study described in subsection (1) and as authorized by law, the department of fish, wildlife, and parks and the department may engage in the activities described in this subsection. For purposes of this study, this section is the exclusive means by which the department of fish, wildlife, and parks may seek to change an appropriation right to an instream flow purpose.

(a) The department of fish, wildlife, and parks, with the consent of the commission, may lease existing rights for the purpose of maintaining or enhancing streamflows for the benefit of fisheries in stream reaches determined eligible by the board pursuant to 85-2-437.

(b) Upon receipt of an application for a lease from the

department of fish, wildlife, and parks, the department shall publish notice of the application as provided in 85-2-307. Parties who believe they may be adversely affected by the proposed lease may file an objection as provided in 85-2-308. A lease may not be approved until all objections are resolved. After resolving all objections filed under 85-2-308, the department shall authorize a lease of an existing right for the purpose of maintaining or enhancing streamflows for the benefit of fisheries if the applicant submits a complete application and meets the requirements of 85-2-402.

(c) The application for a lease authorization must include specific information on the length and location of the stream reach in which the streamflow must be maintained or enhanced and must provide a detailed streamflow measuring plan that describes the points where and the manner in which the streamflow must be measured.

(d) The maximum quantity of water that may be leased is the amount historically diverted by the lessor. However, only the amount historically consumed, or a smaller amount if specified by the department in the lease authorization, may be used to maintain or enhance streamflows below the lessor's point of diversion.

(e) The lease may not be issued for a term of more than 10 years, but it may be renewed once for up to 10 years,

except that a lease of water made available from the development of a water conservation or storage project is restricted to a term of not more than 20 years. Upon receiving notice of a lease renewal, the department shall notify other appropriators potentially affected by the lease and shall allow 30 days for submission of new evidence of adverse effects to other water rights. A lease authorization is not required for a renewal unless an appropriator other than an appropriator described in subsection (2)(i) submits evidence of adverse effects to his the appropriator's rights that has not been considered previously. If new evidence is submitted, a lease authorization must be obtained according to the requirements of 85-2-402.

(f) During the term of the lease, the department may modify or revoke the lease authorization if an appropriator other than an appropriator described in subsection (2)(i) proves by substantial credible evidence that his the appropriator's water right is adversely affected.

(g) The priority of appropriation for a lease under this section is the same as the priority of appropriation of the right that is leased.

(h) Neither a change in appropriation right nor any other authorization is required for the reversion of the appropriation right to the lessor's previous use.

(i) A person issued a water use permit with a priority

of appropriation after the date of filing of an application for a lease authorization under this section may not object to the exercise of the lease according to its terms or the reversion of the appropriation right to the lessor according to the lessor's previous use.

(j) The department of fish, wildlife, and parks shall pay all costs associated with installing devices or providing personnel to measure streamflows according to the measuring plan submitted under this section.

(3) (a) The department of fish, wildlife, and parks shall complete and submit to the board, commission, and water policy committee an annual study progress report by December 1 of each year. This report must include the applicable information listed in subsection (1) for each lease, a summary of stream reach designation activity under 85-2-437, and a summary of leasing activity on all designated streams. If the department of fish, wildlife, and parks has not leased additional water rights under this section by December 1 of any year, the department of fish, wildlife, and parks shall provide compelling justification for that fact in the study progress report.

(b) A final study report must be adopted by the board and commission and submitted to the water policy committee, which shall complete the final report by December 1, 1998.

(4) This section does not create the right for a person

to bring suit to compel the renewal of a lease that has expired. (Terminates June 30, 1999--sec. 4, Ch. 740, L. 1991.)"

Section 2. Section 85-2-437, MCA, is amended to read:

"85-2-437. (Temporary) Board designation of eligible stream reaches. (1) The department of fish, wildlife, and parks, with the consent of the commission, may apply to the board for designation of stream reaches for which water leasing to maintain or enhance streamflows pursuant to 85-2-436 may occur.

(2) The board may declare a stream reach eligible for leasing pursuant to 85-2-436 only if it finds that water leasing is necessary to maintain or enhance streamflows for fisheries.

~~(3) The board may designate no more than 10 stream reaches in the state where water leasing pursuant to 85-2-436 may occur. If the department of fish, wildlife, and parks determines that a water lease cannot be reasonably obtained on a designated stream reach, the board may remove the designation from that stream reach and designate another stream reach pursuant to this section.~~

(3) THE BOARD MAY DESIGNATE NO MORE THAN 20 STREAM REACHES IN THE STATE WHERE WATER LEASING PURSUANT TO 85-2-436 MAY OCCUR. IF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS DETERMINES THAT A WATER LEASE CANNOT BE REASONABLY

1 OBTAINED ON A DESIGNATED STREAM REACH, THE BOARD MAY REMOVE
 2 THE DESIGNATION FROM THAT STREAM REACH AND DESIGNATE ANOTHER
 3 STREAM REACH PURSUANT TO THIS SECTION. (Terminates June 30,
 4 1999--sec. 4, Ch. 740, L. 1991.)"

5 **Section 3.** Section 87-1-257, MCA, is amended to read:

6 "87-1-257. River restoration program. (1) The
 7 department shall administer a river restoration program.

8 (2) The program may consist of physical projects to
 9 improve rivers and their associated lands in order to
 10 conserve and enhance fish and wildlife habitat, including
 11 but not limited to the leasing of water rights under
 12 85-2-436.

13 (3) The department shall work cooperatively with
 14 individuals, conservation districts, and state, local,
 15 private, tribal, and federal organizations to achieve the
 16 goals of the program and may contract with private
 17 organizations to implement specific river restoration
 18 projects.

19 (4) The department shall present projects to the local
 20 conservation district for review and recommendations and
 21 obtain any applicable permits.

22 (5) The department shall receive the consent of the
 23 landowner or lessee of any associated lands before
 24 initiating physical projects on these lands.

25 (6) No A project conducted under the program may not

1 restrict or interfere with the exercise of any water right."

2 **Section 4.** Section 87-1-610, MCA, is amended to read:

3 "87-1-610. (Temporary) Contributions for leasing
 4 appropriation rights -- general spending authority. (1) The
 5 department may accept contributions from public or private
 6 entities for the purpose of leasing appropriation rights to
 7 maintain or enhance instream flows for the benefit of
 8 fisheries.

9 (a) Any contributions accepted by the department under
 10 this section must be deposited in the fish and wildlife
 11 mitigation trust fund established in 87-1-611.

12 (b) The department shall expend money obtained under
 13 this section and deposited in the fish and wildlife
 14 mitigation trust fund exclusively to lease existing rights
 15 for the purpose of maintaining or enhancing instream flows
 16 for fisheries.

17 (2) The department may also expend other departmental
 18 funds to lease existing rights for the purpose of
 19 maintaining or enhancing instream flows for fisheries,
 20 including but not limited to departmental funds in the river
 21 restoration special revenue account established under
 22 87-1-258. (Terminates June 30, 1999--sec. 4, Ch. 740, L.
 23 1991.)"

24 **NEW SECTION. Section 5.** Effective date. [This act] is
 25 effective July 1, 1993.

SENATE BILL NO. 383

INTRODUCED BY GROSFIELD, GILBERT, ANDERSON

A BILL FOR AN ACT ENTITLED: "AN ACT MODIFYING THE ANNUAL REPORT REQUIREMENTS FOR THE WATER LEASING STUDY; REMOVING REVISING THE PROVISION LIMITING ELIGIBLE STREAMS TO 10 20 STREAM REACHES; AUTHORIZING THE USE OF RIVER RESTORATION FUNDS FOR WATER LEASING; AMENDING SECTIONS 85-2-436, 85-2-437, 87-1-257, AND 87-1-610, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

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"85-2-436. (Temporary) Water leasing study. (1) The department of fish, wildlife, and parks and the department, in consultation with the water policy committee, shall conduct and coordinate a study that, at a minimum:

(a) provides the following data for each designated stream reach and each pilot lease entered into under subsection (2):

(i) the length of the stream reach and how it is determined;

(ii) technical methods and data used to determine critical streamflow or volume needed to preserve fisheries;

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determine and substantiate the amount of water available for instream flows through leasing of existing rights;

(iv) contractual parameters, conditions, and other steps taken to ensure that each lease in no way harms other appropriators, particularly if the stream is one that experiences natural dewatering; and

(v) methods and technical means used to monitor use of water under each lease;

(b) based on the data provided under subsection (1)(a), develops a complete model of a water lease and lease authorization that includes a step-by-step explanation of the process from initiation to completion.

(2) For purposes of undertaking the study described in subsection (1) and as authorized by law, the department of fish, wildlife, and parks and the department may engage in the activities described in this subsection. For purposes of this study, this section is the exclusive means by which the department of fish, wildlife, and parks may seek to change an appropriation right to an instream flow purpose.

(a) The department of fish, wildlife, and parks, with the consent of the commission, may lease existing rights for the purpose of maintaining or enhancing streamflows for the benefit of fisheries in stream reaches determined eligible by the board pursuant to 85-2-437.

(b) Upon receipt of an application for a lease from the

department of fish, wildlife, and parks, the department shall publish notice of the application as provided in 85-2-307. Parties who believe they may be adversely affected by the proposed lease may file an objection as provided in 85-2-308. A lease may not be approved until all objections are resolved. After resolving all objections filed under 85-2-308, the department shall authorize a lease of an existing right for the purpose of maintaining or enhancing streamflows for the benefit of fisheries if the applicant submits a complete application and meets the requirements of 85-2-402.

(c) The application for a lease authorization must include specific information on the length and location of the stream reach in which the streamflow must be maintained or enhanced and must provide a detailed streamflow measuring plan that describes the points where and the manner in which the streamflow must be measured.

(d) The maximum quantity of water that may be leased is the amount historically diverted by the lessor. However, only the amount historically consumed, or a smaller amount if specified by the department in the lease authorization, may be used to maintain or enhance streamflows below the lessor's point of diversion.

(e) The lease may not be issued for a term of more than 10 years, but it may be renewed once for up to 10 years,

except that a lease of water made available from the development of a water conservation or storage project is restricted to a term of not more than 20 years. Upon receiving notice of a lease renewal, the department shall notify other appropriators potentially affected by the lease and shall allow 30 days for submission of new evidence of adverse effects to other water rights. A lease authorization is not required for a renewal unless an appropriator other than an appropriator described in subsection (2)(i) submits evidence of adverse effects to his the appropriator's rights that has not been considered previously. If new evidence is submitted, a lease authorization must be obtained according to the requirements of 85-2-402.

(f) During the term of the lease, the department may modify or revoke the lease authorization if an appropriator other than an appropriator described in subsection (2)(i) proves by substantial credible evidence that his the appropriator's water right is adversely affected.

(g) The priority of appropriation for a lease under this section is the same as the priority of appropriation of the right that is leased.

(h) Neither a change in appropriation right nor any other authorization is required for the reversion of the appropriation right to the lessor's previous use.

(i) A person issued a water use permit with a priority

1 of appropriation after the date of filing of an application
2 for a lease authorization under this section may not object
3 to the exercise of the lease according to its terms or the
4 reversion of the appropriation right to the lessor according
5 to the lessor's previous use.

6 (j) The department of fish, wildlife, and parks shall
7 pay all costs associated with installing devices or
8 providing personnel to measure streamflows according to the
9 measuring plan submitted under this section.

10 (3) (a) The department of fish, wildlife, and parks
11 shall complete and submit to the board, commission, and
12 water policy committee an annual study progress report by
13 December 1 of each year. This report must include the
14 applicable information listed in subsection (1) for each
15 lease, a summary of stream reach designation activity under
16 85-2-437, and a summary of leasing activity on all
17 designated streams. If the department of fish, wildlife, and
18 parks has not leased additional water rights under this
19 section by December 1 of any year, the department of fish,
20 wildlife, and parks shall provide compelling justification
21 for that fact in the study progress report.

22 (b) A final study report must be adopted by the board
23 and commission and submitted to the water policy committee,
24 which shall complete the final report by December 1, 1998.

25 (4) This section does not create the right for a person

1 to bring suit to compel the renewal of a lease that has
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7 parks, with the consent of the commission, may apply to the
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9 leasing to maintain or enhance streamflows pursuant to
10 85-2-436 may occur.

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22 (3) THE BOARD MAY DESIGNATE NO MORE THAN 20 STREAM
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25 PARKS DETERMINES THAT A WATER LEASE CANNOT BE REASONABLY

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 22 87-1-258. (Terminates June 30, 1999--sec. 4, Ch. 740, L.
 23 1991.)"

24 **NEW SECTION. Section 5.** Effective date. [This act] is
 25 effective July 1, 1993.

-End-

-8-

SENATE BILL NO. 383

INTRODUCED BY GROSFIELD, GILBERT, ANDERSON

A BILL FOR AN ACT ENTITLED: "AN ACT MODIFYING THE ANNUAL REPORT REQUIREMENTS FOR THE WATER LEASING STUDY; REMOVING REVISING THE PROVISION LIMITING ELIGIBLE STREAMS TO ~~10~~ 20 STREAM REACHES; AUTHORIZING THE USE OF RIVER RESTORATION FUNDS FOR WATER LEASING; AMENDING SECTIONS 85-2-436, 85-2-437, 87-1-257, AND 87-1-610, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 85-2-436, MCA, is amended to read:

"85-2-436. (Temporary) Water leasing study. (1) The department of fish, wildlife, and parks and the department, in consultation with the water policy committee, shall conduct and coordinate a study that, at a minimum:

(a) provides the following data for each designated stream reach and each pilot lease entered into under subsection (2):

(i) the length of the stream reach and how it is determined;

(ii) technical methods and data used to determine critical streamflow or volume needed to preserve fisheries;

(iii) legal standards and technical data used to

determine and substantiate the amount of water available for instream flows through leasing of existing rights;

(iv) contractual parameters, conditions, and other steps taken to ensure that each lease in no way harms other appropriators, particularly if the stream is one that experiences natural dewatering; and

(v) methods and technical means used to monitor use of water under each lease;

(b) based on the data provided under subsection (1)(a), develops a complete model of a water lease and lease authorization that includes a step-by-step explanation of the process from initiation to completion.

(2) For purposes of undertaking the study described in subsection (1) and as authorized by law, the department of fish, wildlife, and parks and the department may engage in the activities described in this subsection. For purposes of this study, this section is the exclusive means by which the department of fish, wildlife, and parks may seek to change an appropriation right to an instream flow purpose.

(a) The department of fish, wildlife, and parks, with the consent of the commission, may lease existing rights for the purpose of maintaining or enhancing streamflows for the benefit of fisheries in stream reaches determined eligible by the board pursuant to 85-2-437.

(b) Upon receipt of an application for a lease from the

1 department of fish, wildlife, and parks, the department
 2 shall publish notice of the application as provided in
 3 85-2-307. Parties who believe they may be adversely affected
 4 by the proposed lease may file an objection as provided in
 5 85-2-308. A lease may not be approved until all objections
 6 are resolved. After resolving all objections filed under
 7 85-2-308, the department shall authorize a lease of an
 8 existing right for the purpose of maintaining or enhancing
 9 streamflows for the benefit of fisheries if the applicant
 10 submits a complete application and meets the requirements of
 11 85-2-402.

12 (c) The application for a lease authorization must
 13 include specific information on the length and location of
 14 the stream reach in which the streamflow must be maintained
 15 or enhanced and must provide a detailed streamflow measuring
 16 plan that describes the points where and the manner in which
 17 the streamflow must be measured.

18 (d) The maximum quantity of water that may be leased is
 19 the amount historically diverted by the lessor. However,
 20 only the amount historically consumed, or a smaller amount
 21 if specified by the department in the lease authorization,
 22 may be used to maintain or enhance streamflows below the
 23 lessor's point of diversion.

24 (e) The lease may not be issued for a term of more than
 25 10 years, but it may be renewed once for up to 10 years,

1 except that a lease of water made available from the
 2 development of a water conservation or storage project is
 3 restricted to a term of not more than 20 years. Upon
 4 receiving notice of a lease renewal, the department shall
 5 notify other appropriators potentially affected by the lease
 6 and shall allow 30 days for submission of new evidence of
 7 adverse effects to other water rights. A lease authorization
 8 is not required for a renewal unless an appropriator other
 9 than an appropriator described in subsection (2)(i) submits
 10 evidence of adverse effects to his the appropriator's rights
 11 that has not been considered previously. If new evidence is
 12 submitted, a lease authorization must be obtained according
 13 to the requirements of 85-2-402.

14 (f) During the term of the lease, the department may
 15 modify or revoke the lease authorization if an appropriator
 16 other than an appropriator described in subsection (2)(i)
 17 proves by substantial credible evidence that his the
 18 appropriator's water right is adversely affected.

19 (g) The priority of appropriation for a lease under
 20 this section is the same as the priority of appropriation of
 21 the right that is leased.

22 (h) Neither a change in appropriation right nor any
 23 other authorization is required for the reversion of the
 24 appropriation right to the lessor's previous use.

25 (i) A person issued a water use permit with a priority

of appropriation after the date of filing of an application for a lease authorization under this section may not object to the exercise of the lease according to its terms or the reversion of the appropriation right to the lessor according to the lessor's previous use.

(j) The department of fish, wildlife, and parks shall pay all costs associated with installing devices or providing personnel to measure streamflows according to the measuring plan submitted under this section.

(3) (a) The department of fish, wildlife, and parks shall complete and submit to the board, commission, and water policy committee an annual study progress report by December 1 of each year. This report must include the applicable information listed in subsection (1) for each lease, a summary of stream reach designation activity under 85-2-437, and a summary of leasing activity on all designated streams. If the department of fish, wildlife, and parks has not leased additional water rights under this section by December 1 of any year, the department of fish, wildlife, and parks shall provide compelling justification for that fact in the study progress report.

(b) A final study report must be adopted by the board and commission and submitted to the water policy committee, which shall complete the final report by December 1, 1998.

(4) This section does not create the right for a person

to bring suit to compel the renewal of a lease that has expired. (Terminates June 30, 1999--sec. 4, Ch. 740, L. 1991.)"

Section 2. Section 85-2-437, MCA, is amended to read:

"85-2-437. (Temporary) Board designation of eligible stream reaches. (1) The department of fish, wildlife, and parks, with the consent of the commission, may apply to the board for designation of stream reaches for which water leasing to maintain or enhance streamflows pursuant to 85-2-436 may occur.

(2) The board may declare a stream reach eligible for leasing pursuant to 85-2-436 only if it finds that water leasing is necessary to maintain or enhance streamflows for fisheries.

~~{3}--The--board--may--designate--no--more--than--10--stream reaches--in--the--state--where--water--leasing--pursuant--to 85-2-436--may--occur--if--the--department--of--fish--wildlife--and parks--determines--that--a--water--lease--cannot--be--reasonably obtained--on--a--designated--stream--reach--the--board--may--remove the--designation--from--that--stream--reach--and--designate--another stream--reach--pursuant--to--this--section--~~

(3) THE BOARD MAY DESIGNATE NO MORE THAN 20 STREAM REACHES IN THE STATE WHERE WATER LEASING PURSUANT TO 85-2-436 MAY OCCUR. IF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS DETERMINES THAT A WATER LEASE CANNOT BE REASONABLY

1 OBTAINED ON A DESIGNATED STREAM REACH, THE BOARD MAY REMOVE
 2 THE DESIGNATION FROM THAT STREAM REACH AND DESIGNATE ANOTHER
 3 STREAM REACH PURSUANT TO THIS SECTION. (Terminates June 30,
 4 1999--sec. 4, Ch. 740, L. 1991.)"

5 **Section 3.** Section 87-1-257, MCA, is amended to read:

6 "87-1-257. River restoration program. (1) The
 7 department shall administer a river restoration program.

8 (2) The program may consist of physical projects to
 9 improve rivers and their associated lands in order to
 10 conserve and enhance fish and wildlife habitat, including
 11 but not limited to the leasing of water rights under
 12 85-2-436.

13 (3) The department shall work cooperatively with
 14 individuals, conservation districts, and state, local,
 15 private, tribal, and federal organizations to achieve the
 16 goals of the program and may contract with private
 17 organizations to implement specific river restoration
 18 projects.

19 (4) The department shall present projects to the local
 20 conservation district for review and recommendations and
 21 obtain any applicable permits.

22 (5) The department shall receive the consent of the
 23 landowner or lessee of any associated lands before
 24 initiating physical projects on these lands.

25 (6) No A project conducted under the program may not

1 restrict or interfere with the exercise of any water right."

2 **Section 4.** Section 87-1-610, MCA, is amended to read:

3 "87-1-610. (Temporary) Contributions for leasing
 4 appropriation rights -- general spending authority. (1) The
 5 department may accept contributions from public or private
 6 entities for the purpose of leasing appropriation rights to
 7 maintain or enhance instream flows for the benefit of
 8 fisheries.

9 (a) Any contributions accepted by the department under
 10 this section must be deposited in the fish and wildlife
 11 mitigation trust fund established in 87-1-611.

12 (b) The department shall expend money obtained under
 13 this section and deposited in the fish and wildlife
 14 mitigation trust fund exclusively to lease existing rights
 15 for the purpose of maintaining or enhancing instream flows
 16 for fisheries.

17 (2) The department may also expend other departmental
 18 funds to lease existing rights for the purpose of
 19 maintaining or enhancing instream flows for fisheries,
 20 including but not limited to departmental funds in the river
 21 restoration special revenue account established under
 22 87-1-258. (Terminates June 30, 1999--sec. 4, Ch. 740, L.
 23 1991.)"

24 **NEW SECTION. Section 5.** Effective date. [This act] is
 25 effective July 1, 1993.