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INTRODUCED BY Robert Stang <sup>House</sup> BILL NO. 137

BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING WATER LAWS; REQUIRING THE FILING OF WATER TRANSFER CERTIFICATES PRIOR TO RECORDING INSTRUMENTS OF REAL PROPERTY TRANSFER; PROVIDING A PENALTY FOR NOT FILING WATER TRANSFERS; PROVIDING FOR NOTICE OF AVAILABILITY OF DECREES TO BE SENT TO THE SUCCESSORS OF THE ORIGINAL OWNERS OF WATER RIGHTS; PERMITTING THE ISSUANCE OF WATER RIGHT PERMITS IN HIGHLY APPROPRIATED BASINS THAT ARE CLOSED BY LEGISLATIVE OR ADMINISTRATIVE ACTION; AMENDING SECTIONS 7-4-2613, 85-2-122, 85-2-232, 85-2-319, 85-2-424, AND 85-2-426, MCA; REPEALING SECTION 85-2-431, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY PROVISION."

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

**Section 1.** Section 7-4-2613, MCA, is amended to read:

**"7-4-2613. Documents subject to recording.** The county clerk shall, upon the payment of the appropriate fees, record by printing, typewriting, or photographic, micrographic, or electronic process or by the use of prepared blank forms:

(1) (a) subject to ~~subsection~~ subsections (1)(b) and (1)(c), deeds, grants, transfers, certified copies of final judgments or decrees partitioning or affecting the title or possession of real property (any part of which is situated in the county), contracts to sell or convey real estate and mortgages of real estate, releases of mortgages, powers of attorney to convey real estate, leases that have been acknowledged or proved, and abstracts of the instruments that have been acknowledged or proved;

(b) an instrument or deed evidencing either a division of real property or a merger of real property only if the instrument or deed is accompanied by a certification from the county treasurer that taxes and special assessments that have been assessed and levied have been paid;

(c) a deed or other instrument evidencing a transfer of real property only if the deed or instrument is accompanied by:

(i) a certification from the department of natural resources and conservation that a water right

1 transfer certificate and fee have been received; or

2 (ii) a notarized certification on a department of natural resources and conservation form signed by  
3 all of the parties to the transaction that the transfer of real property does not involve the transfer of a water  
4 right on record with the department of natural resources and conservation;

5 (2) notices of buyer's interest in real property, notwithstanding any other requirement of law or  
6 rule relating to eligibility for recording of the deed, contract for deed, or other document relating to the  
7 notice of buyer's interest; ~~however.~~ However, if the instrument of conveyance underlying a notice of  
8 buyer's interest would be unrecordable, the clerk and recorder shall notify the buyer by certified mail that  
9 the underlying instrument is unrecordable and may be void;

10 (3) a document on a form provided by the department of revenue certifying that the holder of a  
11 nonprobate interest in real property is deceased and that the deceased's interest is terminated. A  
12 nonprobate interest in real property is a joint tenancy interest, a life estate interest, or any other interest  
13 not requiring probate. The document may be on the form used by the department of revenue for  
14 responding to the application for determination of inheritance or estate tax. It must contain:

15 (a) a statement that the holder of the nonprobate interest has died and that the holder's interest  
16 in the property is terminated;

17 (b) a certification by the county treasurer that the inheritance or estate tax, if any tax was due,  
18 has been paid or that inheritance or estate tax was not due;

19 (c) a description of the property;

20 (4) certificates of births and deaths;

21 (5) wills devising real estate admitted to probate;

22 (6) official bonds;

23 (7) transcripts of judgments that by law are made liens upon real estate;

24 (8) instruments describing or relating to the individual property of married persons;

25 (9) all orders and decrees made by the district court in probate matters affecting real estate and  
26 that are required to be recorded;

27 (10) notice of preemption claims;

28 (11) notice and declaration of water rights;

29 (12) assignments for the benefit of creditors;

30 (13) affidavits of annual work done on mining claims;

- 1 (14) notices of mining locations and declaratory statements;  
 2 (15) estrays and lost property;  
 3 (16) a book containing appraisalment of state lands; and  
 4 (17) other writings that are required or permitted by law to be recorded."

5

6 **Section 2.** Section 85-2-122, MCA, is amended to read:

7 "85-2-122. **Penalties.** (1) A person who violates or refuses or neglects to comply with the  
 8 provisions of this chapter, any order of the department, or any rule of the board is guilty of a misdemeanor.

9 (2) A person who violates or refuses or neglects to comply with the provisions of 85-2-114,  
 10 85-2-421 through 85-2-424, 85-2-426, any an order of the department, or any a rule of the board is  
 11 subject to a civil penalty not to exceed \$1,000 per violation. Each day of violation constitutes a separate  
 12 violation.

13 (3) Fines collected by the department or a district court under subsection (2) must be deposited  
 14 in the account established in 85-2-318 for use by the department in the enforcement of 85-2-114."

15

16 **Section 3.** Section 85-2-424, MCA, is amended to read:

17 "85-2-424. **Filing.** (1) ~~The transferor parties to the transfer~~ of a water right or ~~his agent their~~  
 18 agents or ~~representative representatives~~ shall file with the department a water right transfer certificate  
 19 ~~within 60 days of prior to~~ recording a deed or other instrument evidencing a transfer of real property.

20 (2) ~~Except in the case of a transfer of real property served by a public service water supply, when~~  
 21 ~~any person presents for recording a deed or other instrument evidencing a transfer of real property, the~~  
 22 ~~realty transfer certificate shall note whether or not the transfer includes a transfer of water rights. If the~~  
 23 ~~realty transfer certificate notes a transfer of water rights, the clerk and recorder shall provide such person~~  
 24 ~~the form prescribed under 85-2-423 for the transfer of water rights. The recording of the deed or other~~  
 25 ~~instrument shall not be delayed because of the transfer of the water rights.~~

26 (3) ~~The county clerk and recorder shall send to the department a list of all transfers that involve~~  
 27 ~~transfers of water rights. The list must be sent every month and must include all transfers for the month~~  
 28 ~~immediately preceding the date of submittal to the department. The list must include the names and~~  
 29 ~~addresses of all parties to the transfer and a legal description of the land subject to the transfer. A deed~~  
 30 or instrument evidencing a transfer of real property may not be accepted for recordation by the county clerk

1 and recorder without:

2 (a) a certification from the department that the water right transfer certificate and fee have been  
3 received; or

4 (b) a notarized certification on a department form signed by all of the parties to the transaction that  
5 the transfer of real property does not involve the transfer of a water right on record with the department."

6

7 **Section 4.** Section 85-2-426, MCA, is amended to read:

8 **"85-2-426. Fee.** (1) ~~The board of natural resources and conservation shall by rule prescribe a fee~~  
9 ~~that will be no higher than necessary to cover the cost to the department and the county clerk and recorder~~  
10 ~~in of processing the transfer certificate. The fee must be paid to the department at the time of filing of the~~  
11 ~~water right transfer certificate.~~

12 (2) The fee must be deposited in the water right appropriation account provided for in 85-2-318."

13

14 **Section 5.** Section 85-2-232, MCA, is amended to read:

15 **"85-2-232. Availability of temporary preliminary or preliminary decree.** (1) (a) The water judge  
16 shall send to the department a copy of ~~any~~ a temporary preliminary decree or preliminary decree issued for  
17 a basin, ~~and the,~~

18 (b) The water judge shall serve by mail a notice of availability of the temporary preliminary decree  
19 or preliminary decree to each person who has filed a claim of existing right within the decreed basin or to  
20 that person's successor as documented in the department's records. ~~and~~

21 (c) The water judge shall also serve by mail a notice of availability of the temporary preliminary  
22 decree or preliminary decree to the purchaser under contract for deed, as defined in 70-20-115, of property  
23 in connection with which a claim of existing right has been filed within the decreed basin, ~~or, in~~

24 (d) In the Powder River basin, the water judge shall serve by mail a notice of availability of the  
25 temporary preliminary decree or preliminary decree to each person or to that person's successor as  
26 documented in the department's records, who has filed a declaration of an existing right.

27 (e) The water judge shall enclose with ~~the~~ a notice required under subsections (1)(b) through (1)(d)  
28 an abstract of the disposition of such person's the claimed or declared existing right of a person identified  
29 in this section or that person's successor as documented in the department's records.

30 (f) The notice of availability required under this section shall must also be served upon:

1           (i) those issued or having applied for and not having been denied a permit to beneficially use water  
2 within the decreed basin pursuant to Title 85, chapter 2, part 3~~7~~<sub>2</sub>

3           (ii) those granted a reservation within the decreed basin pursuant to 85-2-316~~7~~<sub>2</sub>; or

4           (iii) other interested persons who request service of the notice from the water judge.

5           (2) The clerk or person designated by the water judge to mail the notice shall make a general  
6 certificate of mailing certifying that a copy of the notice has been placed in the United States mail, postage  
7 prepaid, addressed to each party required to be served notice of the temporary preliminary decree or  
8 preliminary decree. ~~Such~~ The certificate ~~shall be~~ is conclusive evidence of ~~due and~~ legal notice of entry  
9 of decree.

10           ~~(2)(3)~~ Notice of the availability of a preliminary decree must also be published at least once each  
11 week for 3 consecutive weeks in at least three newspapers of general circulation ~~which~~ that cover the  
12 water division or divisions in which the decreed basin is located. This notice must be provided before the  
13 final decree for the basin is issued.

14           ~~(3)(4)~~ Any A person may obtain a copy of the temporary preliminary decree or preliminary decree  
15 upon payment of a fee of \$20 or the cost of printing, whichever is greater, to the water judge."

16  
17           **Section 6.** Section 85-2-319, MCA, is amended to read:

18           **"85-2-319. Permit action in highly appropriated basins or subbasins -- exceptions.** (1) The  
19 legislature may by law preclude permit applications, or the department may by rule reject permit  
20 applications or modify or condition permits issued in a highly appropriated basin or subbasin.

21           (2) A rule may be adopted under this section only upon a petition signed by at least 25% or 10,  
22 whichever is less, of the users of water in the source of supply within a basin or subbasin or upon petition  
23 of the department of health and environmental sciences alleging facts under subsection (2)(d). The petition  
24 must be in a form ~~as~~ prescribed by the department and must allege facts showing that throughout or at  
25 certain times of the year or for certain beneficial uses:

26           (a) there are no unappropriated waters in the source of supply;

27           (b) the rights of prior appropriators will be adversely affected;

28           (c) further uses will interfere unreasonably with other planned uses or developments for which a  
29 permit has been issued or for which water has been reserved; or

30           (d) in the case of a petition filed by the department of health and environmental sciences:

- 1 (i) the water quality of an appropriator will be adversely affected by the issuance of permits;
- 2 (ii) further use will not be substantially in accordance with the classification of water set for the
- 3 source of supply pursuant to 75-5-301(1); or
- 4 (iii) the ability of a discharge permitholder to satisfy effluent limitations of a permit issued in
- 5 accordance with Title 75, chapter 5, part 4, will be adversely affected by the issuance of permits.
- 6 (3) Within 60 days after submission of a petition, the department shall:
- 7 (a) deny the petition in writing, stating its reasons for denial;
- 8 (b) inform the petitioners that the department ~~must~~ shall study the allegations further before
- 9 denying or proceeding further with the petition; or
- 10 (c) initiate rulemaking proceedings in accordance with 2-4-302 through 2-4-305.
- 11 (4) Title 2, chapter 4, parts 1 through 4, govern rulemaking proceedings conducted under this
- 12 section, except that in addition to the notice requirements of those parts, the department notice of the
- 13 rulemaking hearing must be published at least once in each week for 3 successive weeks, not less than 30
- 14 days before the date of the hearing, in a newspaper of general circulation in the county or counties in which
- 15 the source is located. The department shall serve by mail a copy of the notice, not less than 30 days
- 16 before the hearing, upon each person or public agency known from the examination of the records of the
- 17 department to be a claimant, appropriator, or permitholder of water in the source.
- 18 (5) The department may adopt rules to implement the provisions of this section.
- 19 (6) Permit applications for water for public highway construction or government-imposed
- 20 reclamation activities are not subject to the provisions of this section unless the law or rule adopted
- 21 pursuant to subsection (1) specifically provides that a permit may not be issued for public highway
- 22 construction or government-imposed reclamation activities."

23

24 **NEW SECTION. Section 7. Repealer.** Section 85-2-431, MCA, is repealed.

25

26 **NEW SECTION. Section 8. Retroactive applicability.** [Section 6] applies retroactively, within the

27 meaning of 1-2-109, to all existing legislative and administrative basin closures.

28

29 **NEW SECTION. Section 9. Effective dates.** (1) [Sections 5, 6, and 8 and this section] are

30 effective on passage and approval.



STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0137, as introduced

DESCRIPTION OF PROPOSED LEGISLATION: An act to generally revise water laws; require the filing of water transfer certificates prior to recording instruments of real property transfer; provide a penalty for not filing water transfers; provide for notice of availability of decrees to be sent to successors of original owners of water rights; permit the issuance of water right permits in highly appropriated basins that are closed by legislative or administrative action; and provide effective dates and a retroactive applicability provision.

ASSUMPTIONS:

1. Notice of availability of decrees only to successors of interest are not expected to create a significant fiscal impact.
2. Regarding permit application exceptions in closed basins, five additional applications for permits are expected to be received per year.
3. Fewer complaints regarding illegal water use in closed basins will occur.
4. The requirement for filing of water right transfer certificates, prior to recording property transfers, does not become effective until July 1, 1996 (FY97).

FISCAL IMPACT:

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
<u>Expenditures:</u>		
Water Rights Transfers	0	23,720
Closed Basin Permit Applications	<u>500</u>	<u>500</u>
Total	500	24,220
<u>Revenues:</u>		
Water Rights SSR (02)	500	25,500
<u>Net Impact:</u>	0	1,280

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

1. Regarding filing of water right transfers, it is expected that county officials will experience a reduced workload because there would no longer be a need to compile property sales lists involving water rights.
2. Inquiries from concerned property buyers about water rights will be reduced or eliminated.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

1. The overall accuracy of the constitutionally mandated centralized water rights records system will be significantly improved.
2. Water rights holders will receive notice of administrative or judicial actions that might affect their water rights.
3. Regarding notice of availability of decrees only to successors of interest, significant savings should be realized from decreased mailing requirements.

(continued on page 2)

*DAVE LEWIS* 1-22-95  
 DAVE LEWIS, BUDGET DIRECTOR      DATE  
 Office of Budget and Program Planning

*ROBERT STORY JR.* 1-23-95  
 ROBERT STORY JR., PRIMARY SPONSOR      DATE



(continued)

DEDICATION OF REVENUE:

- a) Are there persons or entities that benefit from this dedicated revenue that do not pay?  
(Please explain)

The Water Rights SSR is used to fund state water rights activities. Not only do water rights holders benefit but also others in the state benefit from the state water rights and centralized records systems.

- b) What special information or other advantages exist as a result of using a state special revenue fund that could not be obtained if the revenue were allocated to the general fund?

Revenues associated with state water rights activities are directly used to fund costs associated with state water rights administration, reducing reliance on the general fund or other state special revenue funding sources.

- c) Is the source of revenue relevant to current use of the funds and adequate to fund the program/activity that is intended?  X  Yes   No (if no, explain)

This source of revenue is relevant for funding state water rights administration even though it is not adequate to fully fund all costs associated with water rights administration.

- d) Does the need for this state special revenue provision still exist?  X  Yes   No (Explain)

See item b.

- e) Does the dedicated revenue affect the legislature's ability to scrutinize budgets, control expenditures, or establish priorities for state spending? (Please explain)

This dedicated revenue enhances the legislature's ability to identify water rights-related revenues and expenditures associated with water rights administration.

- f) Does the dedicated revenue fulfill a continuing, legislatively recognized need? (Please explain)

The dedicated revenue ensures that water rights revenues are directly used to fund the state's legislatively mandated water rights program.

- g) How does the dedicated revenue provision result in accounting/auditing efficiencies or inefficiencies in your agency? (Please explain. Also, if the program/activity were general funded, could you adequately account for the program/activity?)

DNRC is managing this existing account and no additional funds or staff are needed as a result of this legislation.

## 1 HOUSE BILL NO. 137

2 INTRODUCED BY STORY

3 BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION  
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING WATER LAWS; ~~REQUIRING THE FILING~~  
6 ~~OF WATER TRANSFER CERTIFICATES PRIOR TO RECORDING INSTRUMENTS OF REAL PROPERTY~~  
7 ~~TRANSFER; PROVIDING A PENALTY FOR NOT FILING WATER TRANSFERS;~~ PROVIDING FOR NOTICE OF  
8 AVAILABILITY OF DECREES TO BE SENT TO THE SUCCESSORS OF THE ORIGINAL OWNERS OF WATER  
9 RIGHTS; PERMITTING THE ISSUANCE OF TEMPORARY WATER RIGHT PERMITS IN HIGHLY  
10 APPROPRIATED BASINS THAT ARE CLOSED BY LEGISLATIVE OR ADMINISTRATIVE ACTION; AMENDING  
11 SECTIONS ~~7-4-2613, 85-2-122, 85-2-232, AND 85-2-319, 85-2-424, AND 85-2-426~~, MCA; ~~REPEALING~~  
12 ~~SECTION 85-2-431, MCA;~~ AND PROVIDING AN IMMEDIATE EFFECTIVE ~~DATES~~ DATE AND A  
13 RETROACTIVE APPLICABILITY PROVISION."

14  
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
1617 ~~Section 1. Section 7-4-2613, MCA, is amended to read:~~

18 ~~"7-4-2613. Documents subject to recording. The county clerk shall, upon the payment of the~~  
19 ~~appropriate fees, record by printing, typewriting, or photographic, micrographic, or electronic process or~~  
20 ~~by the use of prepared blank forms:~~

21 ~~(1) (a) subject to subsections (1)(b) and (1)(c), deeds, grants, transfers, certified copies~~  
22 ~~of final judgments or decrees partitioning or affecting the title or possession of real property (any part of~~  
23 ~~which is situated in the county), contracts to sell or convey real estate and mortgages of real estate,~~  
24 ~~releases of mortgages, powers of attorney to convey real estate, leases that have been acknowledged or~~  
25 ~~proved, and abstracts of the instruments that have been acknowledged or proved;~~

26 ~~(b) an instrument or deed evidencing either a division of real property or a merger of real property~~  
27 ~~only if the instrument or deed is accompanied by a certification from the county treasurer that taxes and~~  
28 ~~special assessments that have been assessed and levied have been paid;~~

29 ~~(c) a deed or other instrument evidencing a transfer of real property only if the deed or instrument~~  
30 ~~is accompanied by:~~

1 ~~(i) a certification from the department of natural resources and conservation that a water right~~  
 2 ~~transfer certificate and fee have been received; or~~

3 ~~(ii) a notarized certification on a department of natural resources and conservation form signed by~~  
 4 ~~all of the parties to the transaction that the transfer of real property does not involve the transfer of a water~~  
 5 ~~right on record with the department of natural resources and conservation;~~

6 ~~(2) notices of buyer's interest in real property, notwithstanding any other requirement of law or~~  
 7 ~~rule relating to eligibility for recording of the deed, contract for deed, or other document relating to the~~  
 8 ~~notice of buyer's interest; however, However, if the instrument of conveyance underlying a notice of~~  
 9 ~~buyer's interest would be unrecordable, the clerk and recorder shall notify the buyer by certified mail that~~  
 10 ~~the underlying instrument is unrecordable and may be void;~~

11 ~~(3) a document on a form provided by the department of revenue certifying that the holder of a~~  
 12 ~~nonprobate interest in real property is deceased and that the deceased's interest is terminated. A~~  
 13 ~~nonprobate interest in real property is a joint tenancy interest, a life estate interest, or any other interest~~  
 14 ~~not requiring probate. The document may be on the form used by the department of revenue for~~  
 15 ~~responding to the application for determination of inheritance or estate tax. It must contain:~~

16 ~~(a) a statement that the holder of the nonprobate interest has died and that the holder's interest~~  
 17 ~~in the property is terminated;~~

18 ~~(b) a certification by the county treasurer that the inheritance or estate tax, if any tax was due,~~  
 19 ~~has been paid or that inheritance or estate tax was not due;~~

20 ~~(c) a description of the property;~~

21 ~~(4) certificates of births and deaths;~~

22 ~~(5) wills devising real estate admitted to probate;~~

23 ~~(6) official bonds;~~

24 ~~(7) transcripts of judgments that by law are made liens upon real estate;~~

25 ~~(8) instruments describing or relating to the individual property of married persons;~~

26 ~~(9) all orders and decrees made by the district court in probate matters affecting real estate and~~  
 27 ~~that are required to be recorded;~~

28 ~~(10) notice of preemption claims;~~

29 ~~(11) notice and declaration of water rights;~~

30 ~~(12) assignments for the benefit of creditors;~~

- 1           ~~(13) affidavits of annual work done on mining claims;~~  
 2           ~~(14) notices of mining locations and declaratory statements;~~  
 3           ~~(15) estrays and lost property;~~  
 4           ~~(16) a book containing appraisal of state lands; and~~  
 5           ~~(17) other writings that are required or permitted by law to be recorded."~~

6  
 7           **Section 2.** ~~Section 85-2-122, MCA, is amended to read:~~

8           ~~"85-2-122. Penalties. (1) A person who violates or refuses or neglects to comply with the~~  
 9 ~~provisions of this chapter, any order of the department, or any rule of the board is guilty of a misdemeanor.~~

10           ~~(2) A person who violates or refuses or neglects to comply with the provisions of 85-2-114,~~  
 11 ~~85-2-421 through 85-2-424, 85-2-426, any an order of the department, or any a rule of the board is~~  
 12 ~~subject to a civil penalty not to exceed \$1,000 per violation. Each day of violation constitutes a separate~~  
 13 ~~violation.~~

14           ~~(3) Fines collected by the department or a district court under subsection (2) must be deposited~~  
 15 ~~in the account established in 85-2-318 for use by the department in the enforcement of 85-2-114."~~

16  
 17           **Section 3.** ~~Section 85-2-424, MCA, is amended to read:~~

18           ~~"85-2-424. Filing. (1) The transferor parties to the transfer of a water right or his agent their~~  
 19 ~~agents or representative representatives shall file with the department a water right transfer certificate~~  
 20 ~~within 60 days of prior to recording a deed or other instrument evidencing a transfer of real property.~~

21           ~~(2) Except in the case of a transfer of real property served by a public service water supply, when~~  
 22 ~~any person presents for recording a deed or other instrument evidencing a transfer of real property, the~~  
 23 ~~realty transfer certificate shall note whether or not the transfer includes a transfer of water rights. If the~~  
 24 ~~realty transfer certificate notes a transfer of water rights, the clerk and recorder shall provide such person~~  
 25 ~~the form prescribed under 85-2-423 for the transfer of water rights. The recording of the deed or other~~  
 26 ~~instrument shall not be delayed because of the transfer of the water rights.~~

27           ~~(3) The county clerk and recorder shall send to the department a list of all transfers that involve~~  
 28 ~~transfers of water rights. The list must be sent every month and must include all transfers for the month~~  
 29 ~~immediately preceding the date of submittal to the department. The list must include the names and~~  
 30 ~~addresses of all parties to the transfer and a legal description of the land subject to the transfer. A deed~~

1 ~~or instrument evidencing a transfer of real property may not be accepted for recordation by the county clerk~~  
 2 ~~and recorder without:~~

3 ~~(a) a certification from the department that the water right transfer certificate and fee have been~~  
 4 ~~received; or~~

5 ~~(b) a notarized certification on a department form signed by all of the parties to the transaction that~~  
 6 ~~the transfer of real property does not involve the transfer of a water right on record with the department."~~

7

8 **Section 4.** ~~Section 85-2-426, MCA, is amended to read:~~

9 ~~"85-2-426. Fee. (1) The board of natural resources and conservation shall by rule prescribe a fee~~  
 10 ~~that will be no higher than necessary to cover the cost to the department and the county clerk and recorder~~  
 11 ~~in of processing the transfer certificate. The fee must be paid to the department at the time of filing of the~~  
 12 ~~water right transfer certificate.~~

13 ~~(2) The fee must be deposited in the water right appropriation account provided for in 85-2-318."~~

14

15 **Section 1.** Section 85-2-232, MCA, is amended to read:

16 **"85-2-232. Availability of temporary preliminary or preliminary decree.** (1) (a) The water judge  
 17 shall send to the department a copy of ~~any~~ a temporary preliminary decree or preliminary decree issued for  
 18 a basin, ~~and the~~

19 (b) The water judge shall serve by mail a notice of availability of the temporary preliminary decree  
 20 or preliminary decree to each person who has filed a claim of existing right within the decreed basin or to  
 21 that person's successor as documented in the department's records. ~~and~~

22 (c) The water judge shall also serve by mail a notice of availability of the temporary preliminary  
 23 decree or preliminary decree to the purchaser under contract for deed, as defined in 70-20-115, of property  
 24 in connection with which a claim of existing right has been filed within the decreed basin, ~~or in~~

25 (d) In the Powder River basin, the water judge shall serve by mail a notice of availability of the  
 26 temporary preliminary decree or preliminary decree to each person or to that person's successor as  
 27 documented in the department's records, who has filed a declaration of an existing right.

28 (e) The water judge shall enclose with ~~the~~ a notice required under subsections (1)(b) through (1)(d)  
 29 an abstract of the disposition of ~~such person's~~ the claimed or declared existing right of a person identified  
 30 in this section or that person's successor as documented in the department's records.

- 1 (f) The notice of availability required under this section ~~shall~~ must also be served upon;
- 2 (i) those issued or having applied for and not having been denied a permit to beneficially use water
- 3 within the decreed basin pursuant to Title 85, chapter 2, part 3<sub>7</sub>;
- 4 (ii) those granted a reservation within the decreed basin pursuant to 85-2-316<sub>7</sub>; or
- 5 (iii) other interested persons who request service of the notice from the water judge.

6 (2) The clerk or person designated by the water judge to mail the notice shall make a general  
 7 certificate of mailing certifying that a copy of the notice has been placed in the United States mail, postage  
 8 prepaid, addressed to each party required to be served notice of the temporary preliminary decree or  
 9 preliminary decree. ~~Such~~ The certificate ~~shall be~~ is conclusive evidence of ~~due and~~ legal notice of entry  
 10 of decree.

11 ~~(2)(3)~~ Notice of the availability of a preliminary decree must also be published at least once each  
 12 week for 3 consecutive weeks in at least three newspapers of general circulation ~~which~~ that cover the  
 13 water division or divisions in which the decreed basin is located. This notice must be provided before the  
 14 final decree for the basin is issued.

15 ~~(3)(4)~~ Any ~~A~~ person may obtain a copy of the temporary preliminary decree or preliminary decree  
 16 upon payment of a fee of \$20 or the cost of printing, whichever is greater, to the water judge."

17  
 18 **Section 2.** Section 85-2-319, MCA, is amended to read:

19 **"85-2-319. Permit action in highly appropriated basins or subbasins -- exceptions.** (1) The  
 20 legislature may by law preclude permit applications, or the department may by rule reject permit  
 21 applications or modify or condition permits issued in a highly appropriated basin or subbasin.

22 (2) A rule may be adopted under this section only upon a petition signed by at least 25% or 10,  
 23 whichever is less, of the users of water in the source of supply within a basin or subbasin or upon petition  
 24 of the department of health and environmental sciences alleging facts under subsection (2)(d). The petition  
 25 must be in a form ~~as~~ prescribed by the department and must allege facts showing that throughout or at  
 26 certain times of the year or for certain beneficial uses:

- 27 (a) there are no unappropriated waters in the source of supply;
- 28 (b) the rights of prior appropriators will be adversely affected;
- 29 (c) further uses will interfere unreasonably with other planned uses or developments for which a  
 30 permit has been issued or for which water has been reserved; or

- 1 (d) in the case of a petition filed by the department of health and environmental sciences:  
 2 (i) the water quality of an appropriator will be adversely affected by the issuance of permits;  
 3 (ii) further use will not be substantially in accordance with the classification of water set for the  
 4 source of supply pursuant to 75-5-301(1); or  
 5 (iii) the ability of a discharge permit holder to satisfy effluent limitations of a permit issued in  
 6 accordance with Title 75, chapter 5, part 4, will be adversely affected by the issuance of permits.

7 (3) Within 60 days after submission of a petition, the department shall:

- 8 (a) deny the petition in writing, stating its reasons for denial;  
 9 (b) inform the petitioners that the department ~~must~~ shall study the allegations further before  
 10 denying or proceeding further with the petition; or  
 11 (c) initiate rulemaking proceedings in accordance with 2-4-302 through 2-4-305.

12 (4) Title 2, chapter 4, parts 1 through 4, govern rulemaking proceedings conducted under this  
 13 section, except that in addition to the notice requirements of those parts, the department notice of the  
 14 rulemaking hearing must be published at least once in each week for 3 successive weeks, not less than 30  
 15 days before the date of the hearing, in a newspaper of general circulation in the county or counties in which  
 16 the source is located. The department shall serve by mail a copy of the notice, not less than 30 days  
 17 before the hearing, upon each person or public agency known from the examination of the records of the  
 18 department to be a claimant, appropriator, or permit holder of water in the source.

19 (5) The department may adopt rules to implement the provisions of this section.

20 ~~(6) Permit applications for water for public highway construction or government imposed~~  
 21 ~~reclamation activities~~ TEMPORARY USES OF WATER NOT TO EXCEED 1 YEAR, WITH A MAXIMUM  
 22 APPROPRIATION NOT TO EXCEED 10 ACRE-FEET PER YEAR, are not subject to the provisions of this  
 23 section unless the law or rule adopted pursuant to subsection (1) specifically provides that a permit may  
 24 not be issued for public highway construction or government imposed reclamation activities TEMPORARY  
 25 USES OF WATER."

26

27 ~~NEW SECTION. Section 7. Repealer. Section 85-2-431, MCA, is repealed.~~

28

29 NEW SECTION. Section 3. Retroactive applicability. [Section ~~6~~ 2] applies retroactively, within the  
 30 meaning of 1-2-109, to all existing legislative and administrative basin closures.





1 HOUSE BILL NO. 137

2 INTRODUCED BY STORY

3 BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING WATER LAWS; ~~REQUIRING THE FILING~~  
6 ~~OF WATER TRANSFER CERTIFICATES PRIOR TO RECORDING INSTRUMENTS OF REAL PROPERTY~~  
7 ~~TRANSFER; PROVIDING A PENALTY FOR NOT FILING WATER TRANSFERS;~~ PROVIDING FOR NOTICE OF  
8 AVAILABILITY OF DECREES TO BE SENT TO THE SUCCESSORS OF THE ORIGINAL OWNERS OF WATER  
9 RIGHTS; PERMITTING THE ISSUANCE OF TEMPORARY WATER RIGHT PERMITS IN HIGHLY  
10 APPROPRIATED BASINS THAT ARE CLOSED BY LEGISLATIVE OR ADMINISTRATIVE ACTION; AMENDING  
11 SECTIONS ~~7-4-2613, 85-2-122, 85-2-232, AND 85-2-319, 85-2-424, AND 85-2-426, MCA; REPEALING~~  
12 ~~SECTION 85-2-431, MCA;~~ AND PROVIDING AN IMMEDIATE EFFECTIVE DATES DATE AND A  
13 RETROACTIVE APPLICABILITY PROVISION."

14  
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

THERE ARE NO CHANGES IN THIS BILL  
AND WILL NOT BE REPRINTED. PLEASE  
REFER TO YELLOW COPY FOR COMPLETE TEXT.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
March 2, 1995

MR. PRESIDENT:


We, your committee on Agriculture, Livestock, and Irrigation having had under consideration HB 137 (third reading copy -- blue), respectfully report that HB 137 be amended as follows and as so amended be concurred in.

Signed:   
Senator Chuck Swysgood, Chair

That such amendments read:

1. Title, lines 9 and 10.  
Strike: "PERMITTING" on line 9 through "ACTION;" on line 10
2. Title, line 11.  
Strike: "SECTIONS"  
Insert: "SECTION"  
Following: "85-2-232"  
Strike: "AND 85-2-319"
3. Title, lines 12 and 13.  
Following: "DATE" on line 12  
Strike: remainder on line 12 through "PROVISION" on line 13
4. Page 5, line 18 through page 6, line 30.  
Strike: sections 2 and 3 in their entirety  
Renumber: subsequent section

-END-

  
Amd. Coord.  
SA Sec. of Senate

SEN. JERGESON  
Senator Carrying Bill

HB 137  
SENATE

491107SC.SRF

## 1 HOUSE BILL NO. 137

2 INTRODUCED BY STORY

3 BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

4  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING WATER LAWS; ~~REQUIRING THE FILING~~  
 6 ~~OF WATER TRANSFER CERTIFICATES PRIOR TO RECORDING INSTRUMENTS OF REAL PROPERTY~~  
 7 ~~TRANSFER; PROVIDING A PENALTY FOR NOT FILING WATER TRANSFERS; PROVIDING FOR NOTICE OF~~  
 8 AVAILABILITY OF DECREES TO BE SENT TO THE SUCCESSORS OF THE ORIGINAL OWNERS OF WATER  
 9 RIGHTS; ~~PERMITTING THE ISSUANCE OF TEMPORARY WATER RIGHT PERMITS IN HIGHLY~~  
 10 ~~APPROPRIATED BASINS THAT ARE CLOSED BY LEGISLATIVE OR ADMINISTRATIVE ACTION; AMENDING~~  
 11 ~~SECTIONS SECTION 7-4-2613, 85-2-122, 85-2-232, AND 85-2-319, 85-2-424, AND 85-2-426, MCA;~~  
 12 ~~REPEALING SECTION 85-2-431, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATES DATE AND~~  
 13 ~~A RETROACTIVE APPLICABILITY PROVISION."~~

14  
 15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16  
 17 ~~Section 1. Section 7-4-2613, MCA, is amended to read:~~

18 ~~"7-4-2613. Documents subject to recording. The county clerk shall, upon the payment of the~~  
 19 ~~appropriate fees, record by printing, typewriting, or photographic, micrographic, or electronic process or~~  
 20 ~~by the use of prepared blank forms:~~

21 ~~(1) (a) subject to subsection subsections (1)(b) and (1)(c), deeds, grants, transfers, certified copies~~  
 22 ~~of final judgments or decrees partitioning or affecting the title or possession of real property (any part of~~  
 23 ~~which is situated in the county), contracts to sell or convey real estate and mortgages of real estate,~~  
 24 ~~releases of mortgages, powers of attorney to convey real estate, leases that have been acknowledged or~~  
 25 ~~proved, and abstracts of the instruments that have been acknowledged or proved;~~

26 ~~(b) an instrument or deed evidencing either a division of real property or a merger of real property~~  
 27 ~~only if the instrument or deed is accompanied by a certification from the county treasurer that taxes and~~  
 28 ~~special assessments that have been assessed and levied have been paid;~~

29 ~~(c) a deed or other instrument evidencing a transfer of real property only if the deed or instrument~~  
 30 ~~is accompanied by:~~

1 ~~(i) a certification from the department of natural resources and conservation that a water right~~  
 2 ~~transfer certificate and fee have been received; or~~

3 ~~(ii) a notarized certification on a department of natural resources and conservation form signed by~~  
 4 ~~all of the parties to the transaction that the transfer of real property does not involve the transfer of a water~~  
 5 ~~right on record with the department of natural resources and conservation;~~

6 ~~(2) notices of buyer's interest in real property, notwithstanding any other requirement of law or~~  
 7 ~~rule relating to eligibility for recording of the deed, contract for deed, or other document relating to the~~  
 8 ~~notice of buyer's interest; however, However, if the instrument of conveyance underlying a notice of~~  
 9 ~~buyer's interest would be unrecordable, the clerk and recorder shall notify the buyer by certified mail that~~  
 10 ~~the underlying instrument is unrecordable and may be void;~~

11 ~~(3) a document on a form provided by the department of revenue certifying that the holder of a~~  
 12 ~~nonprobate interest in real property is deceased and that the deceased's interest is terminated. A~~  
 13 ~~nonprobate interest in real property is a joint tenancy interest, a life estate interest, or any other interest~~  
 14 ~~not requiring probate. The document may be on the form used by the department of revenue for~~  
 15 ~~responding to the application for determination of inheritance or estate tax. It must contain:~~

16 ~~(a) a statement that the holder of the nonprobate interest has died and that the holder's interest~~  
 17 ~~in the property is terminated;~~

18 ~~(b) a certification by the county treasurer that the inheritance or estate tax, if any tax was due,~~  
 19 ~~has been paid or that inheritance or estate tax was not due;~~

20 ~~(c) a description of the property;~~

21 ~~(4) certificates of births and deaths;~~

22 ~~(5) wills devising real estate admitted to probate;~~

23 ~~(6) official bonds;~~

24 ~~(7) transcripts of judgments that by law are made liens upon real estate;~~

25 ~~(8) instruments describing or relating to the individual property of married persons;~~

26 ~~(9) all orders and decrees made by the district court in probate matters affecting real estate and~~  
 27 ~~that are required to be recorded;~~

28 ~~(10) notice of preemption claims;~~

29 ~~(11) notice and declaration of water rights;~~

30 ~~(12) assignments for the benefit of creditors;~~

- 1       ~~(13) affidavits of annual work done on mining claims;~~  
 2       ~~(14) notices of mining locations and declaratory statements;~~  
 3       ~~(15) estrays and lost property;~~  
 4       ~~(16) a book containing appraisement of state lands; and~~  
 5       ~~(17) other writings that are required or permitted by law to be recorded."~~

6  
 7       **Section 2.** ~~Section 85-2-122, MCA, is amended to read:~~

8       ~~"85-2-122. Penalties. (1) A person who violates or refuses or neglects to comply with the~~  
 9       ~~provisions of this chapter, any order of the department, or any rule of the board is guilty of a misdemeanor.~~

10       ~~(2) A person who violates or refuses or neglects to comply with the provisions of 85-2-114,~~  
 11       ~~85-2-421 through 85-2-424, 85-2-426, any an order of the department, or any a rule of the board is~~  
 12       ~~subject to a civil penalty not to exceed \$1,000 per violation. Each day of violation constitutes a separate~~  
 13       ~~violation.~~

14       ~~(3) Fines collected by the department or a district court under subsection (2) must be deposited~~  
 15       ~~in the account established in 85-2-318 for use by the department in the enforcement of 85-2-114."~~

16  
 17       **Section 3.** ~~Section 85-2-424, MCA, is amended to read:~~

18       ~~"85-2-424. Filing. (1) The transferor parties to the transfer of a water right or his agent their~~  
 19       ~~agents or representative representatives shall file with the department a water right transfer certificate~~  
 20       ~~within 60 days of prior to recording a deed or other instrument evidencing a transfer of real property.~~

21       ~~(2) Except in the case of a transfer of real property served by a public service water supply, when~~  
 22       ~~any person presents for recording a deed or other instrument evidencing a transfer of real property, the~~  
 23       ~~realty transfer certificate shall note whether or not the transfer includes a transfer of water rights. If the~~  
 24       ~~realty transfer certificate notes a transfer of water rights, the clerk and recorder shall provide such person~~  
 25       ~~the form prescribed under 85-2-423 for the transfer of water rights. The recording of the deed or other~~  
 26       ~~instrument shall not be delayed because of the transfer of the water rights.~~

27       ~~(3) The county clerk and recorder shall send to the department a list of all transfers that involve~~  
 28       ~~transfers of water rights. The list must be sent every month and must include all transfers for the month~~  
 29       ~~immediately preceding the date of submittal to the department. The list must include the names and~~  
 30       ~~addresses of all parties to the transfer and a legal description of the land subject to the transfer. A deed~~

1 ~~or instrument evidencing a transfer of real property may not be accepted for recordation by the county clerk~~  
 2 ~~and recorder without:~~

3 ~~(a) a certification from the department that the water right transfer certificate and fee have been~~  
 4 ~~received; or~~

5 ~~(b) a notarized certification on a department form signed by all of the parties to the transaction that~~  
 6 ~~the transfer of real property does not involve the transfer of a water right on record with the department."~~

7  
 8 **Section 4.** Section 85-2-426, MCA, is amended to read:

9 ~~"85-2-426. Fee. (1) The board of natural resources and conservation shall by rule prescribe a fee~~  
 10 ~~that will be no higher than necessary to cover the cost to the department and the county clerk and recorder~~  
 11 ~~in of processing the transfer certificate. The fee must be paid to the department at the time of filing of the~~  
 12 ~~water right transfer certificate.~~

13 ~~(2) The fee must be deposited in the water right appropriation account provided for in 85-2-318."~~

14  
 15 **Section 1.** Section 85-2-232, MCA, is amended to read:

16 **"85-2-232. Availability of temporary preliminary or preliminary decree.** (1) (a) The water judge  
 17 shall send to the department a copy of ~~any~~ a temporary preliminary decree or preliminary decree issued for  
 18 a basin, ~~and the,~~

19 ~~(b) The~~ The water judge shall serve by mail a notice of availability of the temporary preliminary decree  
 20 or preliminary decree to each person who has filed a claim of existing right within the decreed basin or to  
 21 that person's successor as documented in the department's records, and

22 ~~(c) The water judge shall also serve by mail a notice of availability of the temporary preliminary~~  
 23 ~~decree or preliminary decree~~ to the purchaser under contract for deed, as defined in 70-20-115, of property  
 24 in connection with which a claim of existing right has been filed within the decreed basin, ~~or, in~~

25 ~~(d) In the Powder River basin, the water judge shall serve by mail a notice of availability of the~~  
 26 ~~temporary preliminary decree or preliminary decree~~ to each person or to that person's successor as  
 27 documented in the department's records, who has filed a declaration of an existing right.

28 ~~(e) The water judge shall enclose with the~~ a notice required under subsections (1)(b) through (1)(d)  
 29 an abstract of the disposition of ~~such person's~~ the claimed or declared existing right of a person identified  
 30 in this section or that person's successor as documented in the department's records.

1 (f) The notice of availability required under this section ~~shall~~ must also be served upon:

2 (i) those issued or having applied for and not having been denied a permit to beneficially use water  
3 within the decreed basin pursuant to Title 85, chapter 2, part 3<sub>7z</sub>;

4 (ii) those granted a reservation within the decreed basin pursuant to 85-2-316<sub>z</sub>; or

5 (iii) other interested persons who request service of the notice from the water judge.

6 (2) The clerk or person designated by the water judge to mail the notice shall make a general  
7 certificate of mailing certifying that a copy of the notice has been placed in the United States mail, postage  
8 prepaid, addressed to each party required to be served notice of the temporary preliminary decree or  
9 preliminary decree. ~~Such~~ The certificate ~~shall be~~ is conclusive evidence of ~~due and~~ legal notice of entry  
10 of decree.

11 ~~(2)(3)~~ Notice of the availability of a preliminary decree must also be published at least once each  
12 week for 3 consecutive weeks in at least three newspapers of general circulation ~~which~~ that cover the  
13 water division or divisions in which the decreed basin is located. This notice must be provided before the  
14 final decree for the basin is issued.

15 ~~(3)(4)~~ Any ~~A~~ person may obtain a copy of the temporary preliminary decree or preliminary decree  
16 upon payment of a fee of \$20 or the cost of printing, whichever is greater, to the water judge."

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18 ~~Section 2. Section 85-2-319, MCA, is amended to read:~~

19 ~~"85-2-319. Permit action in highly appropriated basins or subbasins — exceptions. (1) The~~  
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21 ~~applications or modify or condition permits issued in a highly appropriated basin or subbasin.~~

22 ~~(2) A rule may be adopted under this section only upon a petition signed by at least 25% or 10,~~  
23 ~~whichever is less, of the users of water in the source of supply within a basin or subbasin or upon petition~~  
24 ~~of the department of health and environmental sciences alleging facts under subsection (2)(d). The petition~~  
25 ~~must be in a form as prescribed by the department and must allege facts showing that throughout or at~~  
26 ~~certain times of the year or for certain beneficial uses:~~

27 ~~(a) there are no unappropriated waters in the source of supply;~~

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29 ~~(c) further uses will interfere unreasonably with other planned uses or developments for which a~~  
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1 ~~(d) in the case of a petition filed by the department of health and environmental sciences:~~  
 2 ~~(i) the water quality of an appropriator will be adversely affected by the issuance of permits;~~  
 3 ~~(ii) further use will not be substantially in accordance with the classification of water set for the~~  
 4 ~~source of supply pursuant to 75-5-301(1); or~~

5 ~~(iii) the ability of a discharge permit holder to satisfy effluent limitations of a permit issued in~~  
 6 ~~accordance with Title 75, chapter 5, part 4, will be adversely affected by the issuance of permits.~~

7 ~~(3) Within 60 days after submission of a petition, the department shall:~~

8 ~~(a) deny the petition in writing, stating its reasons for denial;~~

9 ~~(b) inform the petitioners that the department must shall study the allegations further before~~  
 10 ~~denying or proceeding further with the petition; or~~

11 ~~(c) initiate rulemaking proceedings in accordance with 2-4-302 through 2-4-305.~~

12 ~~(4) Title 2, chapter 4, parts 1 through 4, govern rulemaking proceedings conducted under this~~  
 13 ~~section, except that in addition to the notice requirements of those parts, the department notice of the~~  
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 17 ~~before the hearing, upon each person or public agency known from the examination of the records of the~~  
 18 ~~department to be a claimant, appropriator, or permit holder of water in the source.~~

19 ~~(5) The department may adopt rules to implement the provisions of this section.~~

20 ~~(6) Permit applications for water for public highway construction or government imposed~~  
 21 ~~reclamation activities TEMPORARY USES OF WATER NOT TO EXCEED 1 YEAR, WITH A MAXIMUM~~  
 22 ~~APPROPRIATION NOT TO EXCEED 10 ACRE FEET PER YEAR, are not subject to the provisions of this~~  
 23 ~~section unless the law or rule adopted pursuant to subsection (1) specifically provides that a permit may~~  
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 25 ~~USES OF WATER.~~"

26  
 27 ~~NEW SECTION. Section 7. Repealer. Section 85-2-431, MCA, is repealed.~~

28  
 29 ~~NEW SECTION. Section 3. Retroactive applicability. [Section 6-2] applies retroactively, within the~~  
 30 ~~meaning of 1-2-109, to all existing legislative and administrative basin closures.~~



