

SENATE BILL NO. 147

INTRODUCED BY

Hertel

BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE WATER RESOURCE ADMINISTRATION OF STATE WATER PROJECT LAWS; ESTABLISHING A SELF-SUPPORTING LEASE MANAGEMENT PROGRAM FOR WATER PROJECT LANDS; ALLOWING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO TRANSFER OR DISPOSE OF AN INACTIVE STATE WATER PROJECT WITHOUT A DETERMINATION OF MARKET VALUE; CLARIFYING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION'S DUTY TO MAINTAIN FINANCIAL RECORDS OF STATE WATER PROJECTS; AMENDING SECTIONS 85-1-202, 85-1-204, 85-1-206, 85-1-209, 85-1-210, 85-1-211, AND 85-1-215, MCA; AND PROVIDING AN EFFECTIVE DATE."

STATEMENT OF INTENT

A statement of intent is necessary for this bill because [section 3] authorizes the department of natural resources and conservation to adopt rules implementing the leasing program established in this bill.

The legislature intends that rules adopted by the department specify the procedure to be used by the department in determining how it will lease project lands and specify the standards, conditions, limitations, and requirements it will use as terms of the lease under the statutory guidelines provided in [section 3].

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

NEW SECTION. Section 1. Statement of policy. It is the policy of the state that in the interest of accomplishing a self-supporting program from the leasing of project lands, the project lands must be appraised by the department at least once during the term of each lease. The purpose of the appraisals is to determine the lease value of project lands and the general condition of the lands.

NEW SECTION. Section 2. Leases authorized. (1) The department may lease all project lands appurtenant to a state-owned water project for purposes that the department considers appropriate.

1 (2) Only an individual person, a husband and wife, or a federal, state, or local entity may lease
2 project lands or hold more than one lease to project lands.

3 (3) An association, partnership, corporation, or other nongovernmental entity may not lease project
4 lands.

5 (4) A lease of project lands may not exceed 10 years.

6 (5) All cabinsite leases issued prior to July 1, 1994, expire March 31, 1996.

7

8 NEW SECTION. **Section 3. Rulemaking.** The department may adopt rules necessary to implement
9 and administer the leasing of project lands. These rules may include but are not limited to rules governing
10 the:

11 (1) growing of crops or grazing of livestock;

12 (2) establishment of responsibility for a lessee to pay the assessment of taxes for weed control;

13 (3) acquisition and use of water on project lands;

14 (4) leasing of project lands by competitive bidding and the establishment of bid procedures and bid
15 deposits;

16 (5) process for giving notice and for cancellation, termination, and renewal of leases, including
17 existing leases on project lands;

18 (6) general form of the lease and the form and conditions of a bond when the department considers
19 a bond necessary;

20 (7) changes or modifications in lease conditions or lease use; and

21 (8) placement and removal of improvements directly related to the necessary use of the project
22 lands.

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24 NEW SECTION. **Section 4. Appraisal of project lands -- adjustment of lease fee.** The department
25 shall appraise project lands owned by the department and shall maintain records of the appraisals. Not less
26 than once during the term of a lease, the department shall reappraise the project lands and adjust the lease
27 fee accordingly.

28

29 NEW SECTION. **Section 5. Full market value required.** The department shall determine the full
30 market value of project lands. The department may not accept a bid that is below full market value.

1 **NEW SECTION. Section 6. Withdrawal of lands from leasing.** The department may withdraw
2 project lands from leasing for a period of time as the department determines to be in the best interest of
3 the state.

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5 **NEW SECTION. Section 7. Assignment of leases -- subleasing not allowed.** (1) A lease of project
6 lands may be assigned on forms prescribed by the department. An assignment is not binding on the
7 department unless the assignment is filed with and approved by the department. An assignment fee must
8 be paid to the department at the time of filing the assignment.

9 (2) An assignment of a lease may be made only to a person who qualifies for a lease under [section
10 2].

11 (3) The department may not approve a contingent or collateral assignment of a lease.

12 (4) A lease may not be subleased.

13

14 **NEW SECTION. Section 8. Changes in lease use not authorized -- cancellation.** (1) During the
15 term of a lease, the use of the project lands may not be changed. A change in the use of the lands
16 automatically voids the lease.

17 (2) The department may cancel a lease for any of the following causes:

18 (a) fraud, misrepresentation, or concealment of facts relating to issuance of the lease, which if
19 known would have prevented its issuance in the form or to the party issued;

20 (b) subleasing project lands;

21 (c) placing of unauthorized improvements on project lands;

22 (d) using the lands for purposes other than those authorized by the lease;

23 (e) conviction of the lessee for a felony offense involving a dangerous drug, as defined in Title 50,
24 chapter 32, and involving the planting, propagating, cultivating, growing, harvesting, manufacturing,
25 compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging,
26 storing, or concealing of a dangerous drug on any portion of the lands;

27 (f) nonpayment of rental fees;

28 (g) violation of a lease condition;

29 (h) other causes that in the judgment of the department make the cancellation of the lease
30 necessary in order to do justice to all parties concerned or to protect the interests of the state.

1 (3) Cancellation of a lease under this section does not entitle the lessee to a refund of rentals paid
2 or exempt the lessee from the payment of rentals, penalties, or other compensation due the state.

3

4 **NEW SECTION. Section 9. Improvements authorized -- no compensation -- removal.** (1) A lessee
5 of project lands may place on the lands a reasonable amount of improvements directly related to the
6 necessary use of the lands as provided in the lease.

7 (2) The department is not liable to pay compensation to a lessee or a former lessee for
8 improvements made to project lands.

9 (3) A former lessee is responsible to reclaim project lands to the condition existing prior to the
10 placement of the improvements. If the former lessee fails to remove the improvements from the land within
11 60 days from the date of the expiration of the lease, all of the improvements become the property of the
12 department unless the department for good cause extends the time for removal of the improvements. The
13 department may require a former lessee to remove improvements made by the former lessee from project
14 lands at the former lessee's expense.

15

16 **NEW SECTION. Section 10. No pledge or mortgage of leasehold interest.** A lessee of project lands
17 may not pledge the lease or mortgage a leasehold interest in the project lands.

18

19 **NEW SECTION. Section 11. Project lands lease account.** There is established a project lands lease
20 account within the state special revenue fund of the state treasury. All lease fees collected under [sections
21 1 through 11] must be deposited in the account to pay the department's costs and expenses in
22 administering [sections 1 through 11].

23

24 **Section 12.** Section 85-1-202, MCA, is amended to read:

25 **"85-1-202. Department actions subject to board approval.** (1) The department may not, without
26 prior approval of the board:

27 (a) acquire by appropriation or otherwise a water right or interest ~~therein~~ in a water right; ~~and may~~
28 ~~not~~

29 (b) acquire real property or an interest ~~therein~~ in real property (except rights of access for the
30 purpose of construction, operation, or maintenance of works) or mortgage;

- 1 (c) ~~or otherwise~~ create a lien on ~~the same~~ water rights or real property;
- 2 (d) ~~or dispose of in any manner~~ water rights or real property or interest ~~therein~~ in water rights or
3 real property; ~~without prior approval of the board. The department may not~~
- 4 (e) construct or cause to be constructed or contract for the construction of works or projects;
5 ~~without prior approval of the board. The department may not or~~
- 6 (f) loan funds to a person or water user users' association for the purpose of constructing or
7 maintaining works ~~without prior approval of the board.~~
- 8 (2) A lease of project lands pursuant to [sections 1 through 11] is not subject to the approval of
9 the board."

10

11 **Section 13.** Section 85-1-204, MCA, is amended to read:

12 "**85-1-204. Department powers over state waters** water. (1) The department, ~~with the approval~~
13 ~~of the board,~~ may sell, lease, and otherwise dispose of ~~all waters which may be~~ water impounded under
14 this chapter, ~~and the~~. The water may be sold for the purpose of irrigation, development of power, watering
15 of stock, or ~~any other purpose~~ purposes. The department, ~~with the approval of the board,~~ may also lease
16 water under the state water leasing program established under the provisions of 85-2-141. To the extent
17 that it may be necessary to carry out this chapter and subject to a compliance with the other provisions
18 of this chapter, the department has full control of all the water of the state not under the exclusive control
19 of the United States and not vested in private ownership, and it shall take ~~such steps as may be necessary~~
20 the necessary actions to appropriate and conserve the ~~same~~ water for the use of the people. The authority
21 of the department conferred by this chapter extends and applies to rights to the natural flow of the ~~waters~~
22 water of this state ~~which that~~ it may acquire, ~~with the approval of the board,~~ by condemnation, purchase,
23 exchange, appropriation, or agreement.

24 (2) For the purpose of regulating the diversion of ~~these waters~~ water, the department may enter
25 upon the means and place of use of all appropriators for making surveys of respective rights and seasonal
26 needs.

27 (3) The department may take into consideration the decrees of the courts of this state having
28 jurisdiction ~~which that~~ purport to adjudicate the ~~waters~~ water of a stream or its tributaries, ~~and a~~. A fair,
29 reasonable, and equitable reconciliation ~~shall~~ must be made between the claimants asserting rights under
30 different decrees and between decreed rights and asserted rights of appropriation not adjudicated by ~~any~~

1 a court.

2 (4) The department, ~~at its discretion,~~ may hold hearings relating to the rights of respective
3 claimants after first giving ~~such~~ the notice as it considers appropriate, ~~and~~ The department shall make
4 findings of the date and quantity of appropriation and use of all claimants ~~which~~ that the department ~~will~~
5 ~~recognize~~ recognizes and ~~observe~~ observes in diverting the ~~waters~~ water that the department
6 owns. The department may ~~police~~ measure and distribute the water to the owner of the recognized
7 appropriation ~~the waters due him upon request and under terms agreed upon~~ under agreed-upon terms.

8 (5) The department, when engaged in controlling and dividing the natural flow of a stream under
9 the authority granted by this chapter, is exercising a police power of the state, and water commissioners
10 appointed by any court may not deprive the department of any of the ~~waters~~ water owned or administered
11 under agreement with respective owners. The owner of a prior right ~~contending~~ who contends that the
12 department is not recognizing and respecting the appropriation may resort to a court for the purpose of
13 determining whether or not the rights of the claimant have been invaded, and the department shall observe
14 the terms of the final decree.

15 (6) When the department impounds or acquires the right of appropriation of the ~~waters~~ water of
16 a stream it may divert or authorize the diversion at ~~any~~ a point on the stream or ~~any~~ a portion ~~thereof~~ of
17 the stream when it is done without injury to a prior appropriator."

18

19 **Section 14.** Section 85-1-206, MCA, is amended to read:

20 **"85-1-206. Construction of works by department.** (1) ~~Subject to the approval of the board, the~~
21 The department may construct works, with the cost of the construction to be paid wholly by means of or
22 with the proceeds of revenue bonds ~~hereinafter authorized~~ or of a grant or loan to aid in financing the
23 construction from the United States or any instrumentality or agency ~~thereof~~ of the United States and other
24 funds provided for the construction. Before constructing a project, the department shall estimate the cost
25 of the project, the cost of operation and maintenance, and the ~~revenues~~ revenue to be derived ~~therefrom~~
26 from the operation of the project. A project may not be constructed unless, according to the estimates,
27 the ~~revenues~~ revenue to be derived will be sufficient to pay the cost of operation and maintenance and the
28 principal and interest of loans or revenue bonds ~~which may be~~ issued for the cost of the project, ~~;~~
29 ~~however, in~~ in connection with the issuance of revenue bonds, the failure of the department to make the
30 estimates required by this section or to make them in proper form does not affect the validity or

1 enforceability of ~~these~~ the bonds or of the trust indenture, resolution, or other security ~~therefor~~ for the
2 bonds.

3 (2) Should the bid of the lowest responsible bidder on any capital improvement associated with
4 public works exceed the department estimates of the cost of the improvements by more than 5%, the
5 department shall obtain approval from the water ~~user~~ users' association, whenever an association is
6 involved, before the bid is accepted. ~~; however, capital~~ Capital improvements of an emergency nature
7 necessary to protect life or property or to supply immediate needs for water do not require ~~such~~
8 of the water users' association.

9 (3) A purpose of this chapter is to meet, so far as possible, a statewide need for the conservation
10 and use of water through the construction and operation of projects ~~designed for these purposes~~. The
11 projects to be ~~finally~~ constructed ~~shall~~ must qualify as parts of the statewide program and ~~shall~~ must be
12 approved ~~by the board~~ upon the showing of ~~their~~ prospective ability to meet, through the sale of water or
13 other services, the cost of operation and maintenance and the principal and interest of loans and revenue
14 bonds issued to finance the construction. The failure ~~of the board~~ to determine the prospective ability of
15 a project does not affect the validity or enforceability of the bonds or of the trust indenture, resolution, or
16 other security ~~therefor~~ for the bonds."

17

18 **Section 15.** Section 85-1-209, MCA, is amended to read:

19 **"85-1-209. Acquisition of property by department.** (1) The department, ~~subject to the approval~~
20 ~~of the board under 85-1-202,~~ may acquire by purchase or exchange upon terms and conditions and in a
21 manner it considers proper and may acquire by condemnation, in accordance with laws applicable to the
22 condemnation of property for public use, any land, rights, water rights, easements, franchises, and other
23 property considered necessary for the construction, operation, and maintenance of works. Title to property
24 purchased or condemned ~~shall~~ must be taken in the name of the department. The department is under no
25 obligation to accept and pay for any property condemned under this chapter except from the funds provided
26 by this chapter. In any proceedings to condemn, orders may be made by the court ~~having~~ that has
27 jurisdiction of the suit, action, or proceeding as may be warranted by law and the facts.

28 (2) In a condemnation proceeding brought under the powers of eminent domain for the purpose
29 of carrying out this chapter, all persons interested in the title of or holding liens upon the property sought
30 to be acquired, as disclosed by the public records, ~~shall~~ must be made parties, and the court in the action

1 shall partition and distribute the damages awarded, if any, among those persons as their rights appear. If
 2 there is controversy between them, the court may direct the amount of the damage awarded to be paid into
 3 court to abide the result of further appropriate proceedings either at law or in equity.

4 (3) ~~The taking~~ Taking possession of the property sought to be condemned may not be delayed by
 5 reason of any dispute between the rival claimants or the failure to join any of them as a party to the
 6 proceedings in condemnation.

7 (4) If water rights are acquired or exercised by the department in connection with two or more
 8 works or projects, the department by order shall apportion or allocate to each of the works or projects ~~such~~
 9 the part of these the water rights as it may determine that the department determines is necessary. Upon
 10 the adoption of the order, ~~these the water rights shall be~~ are considered a part of each of the works or
 11 projects to the extent that the water rights have been ~~se~~ apportioned or allocated ~~thereto respectively~~."

12

13 **Section 16.** Section 85-1-210, MCA, is amended to read:

14 "**85-1-210. Disposal of property by department.** In addition to the powers conferred upon the
 15 department to sell, lease, or otherwise dispose of ~~waters~~ water for the purpose of irrigation, development
 16 of power, watering of stock, or other purposes, the department, ~~with the approval of the board,~~ may sell,
 17 lease, or otherwise dispose of ~~waters~~ water from its waterworks systems for public, domestic, industrial,
 18 and other uses and for fire protection. The department, ~~with the approval of the board,~~ may sell or
 19 otherwise dispose of a water project, after the discharge of all of the bonds issued to finance the
 20 construction or acquisition ~~thereof of the project,~~ if any, and of all interest, ~~thereon and~~ costs and expenses
 21 incurred in connection with any action or proceeding by or on behalf of the holders of the bonds. ~~The~~
 22 Except for a water project for which no water purchase contracts are managed by the department and for
 23 which no money is collected by the department, the department shall make a determination of the market
 24 value of ~~the a~~ water project prior to its sale or other disposition. The department's determination of market
 25 value ~~shall~~ must consider all liens, encumbrances, and other limitations on the water project."

26

27 **Section 17.** Section 85-1-211, MCA, is amended to read:

28 "**85-1-211. Management of property -- water contracts.** (1) Subject to this chapter, the
 29 department may fix and establish the prices, rates, and charges at which the resources and facilities made
 30 available under this chapter may be sold and disposed of and enter into contracts and agreements and do

1 those things that in its judgment are necessary, convenient, or expedient for the accomplishment of the
 2 purposes and objects of this chapter, under general rules and upon terms, limitations, and conditions as
 3 it prescribes.

4 (2) The department shall enter into the contracts and fix and establish the prices, rates, and
 5 charges ~~so as~~ to provide at all times funds that ~~will be~~ are sufficient to pay all costs of operation and
 6 maintenance of the works authorized by this chapter, together with necessary repairs to the works, and
 7 that will provide at all times sufficient funds to meet and pay the principal and interest of all bonds or loans
 8 as they severally become due and payable.

9 (3) This chapter does not authorize any change, alteration, or revision of ~~these~~ the rates, prices,
 10 or charges as established by a contract entered into under this chapter except as provided by the contract.

11 (4) A contract made by the department for the sale of water, use of water, water storage, or other
 12 service or for the sale of property or facilities must provide that, in the event of a failure or default in the
 13 payment of money specified in the contract to be paid to the department, the department may, upon notice
 14 as is prescribed in the contract, terminate the contract and all obligations under the contract. The act of
 15 the department in ceasing on default to furnish or deliver water, use of water, water storage, or other
 16 service under the contract does not deprive the department of or limit a remedy provided by the contract
 17 or by law for the recovery of money due or that may become due under the contract.

18 (5) ~~Subject to the approval of the board under 85-1-202, the~~ The department may sell, transfer to
 19 water ~~user~~ users' associations, abandon, lease or rent, or otherwise dispose of any rights-of-way,
 20 easements, properties, or interests ~~or lease or rent the same~~ or otherwise take and receive the income or
 21 profit and revenue ~~therefrom~~ from them without regard to other laws providing for the disposition of state
 22 property. Except for a water project for which no water management contracts are managed by the
 23 department and for which no money is collected by the department, ~~Prior~~ prior to the department's sale,
 24 transfer, or other disposition, a determination must be made by the department as to the market value of
 25 the rights-of-way, easements, properties, or interests to be sold, transferred, abandoned, or otherwise
 26 disposed of. The department's determination of market value must consider all liens, encumbrances, and
 27 other limitations on the project properties or interests.

28 (6) (a) The department shall attempt to dispose of its canal projects by June 30, 1995. The canal
 29 projects to be disposed of include the:

30 (i) Columbus canal;

- 1 (ii) Delphia-Melstone canals;
- 2 (iii) Hysham pumping canals;
- 3 (iv) Lewistown ditch;
- 4 (v) Livingston ditch;
- 5 (vi) Florence canal;
- 6 (vii) Paradise canal;
- 7 (viii) Park Branch canal;
- 8 (ix) Sidney pumping canals;
- 9 (x) South Side canal;
- 10 (xi) Vigilante canal; and
- 11 (xii) West Bench canal.

12 (b) The department may dispose of a canal project by sale, transfer to a water users' association,
 13 abandonment, or other legal conveyance. If there is an existing water users' association on the canal
 14 project, the provisions of ~~85-6-109(5)~~ 85-6-109 must be complied with in the disposal of the canal project.
 15 The department shall give preference to existing water users' associations operating and maintaining the
 16 canal project.

17 (c) Upon the sale or transfer of a canal project, the department shall either cancel or write off from
 18 the accounts receivable carried on the books of the department a sum not to exceed any previous 1-year
 19 cost of operating and maintaining the canal project or make a payment not to exceed any previous 1-year
 20 cost of operating and maintaining the canal project. For a canal project not disposed of by June 30, 1995,
 21 the water users of the canal project are responsible for the department's administrative costs and the actual
 22 costs of operation and maintenance of the canal project.

23 (7) An employee or agent of the department authorized by the director may enter upon any land
 24 to carry out the purposes of this section, including but not limited to entry to make an inspection of the
 25 canal project that the department considers necessary ~~of the canal project~~, entry to salvage or remove
 26 project property, and entry to make physical alterations to canal project property. The department shall
 27 give reasonable notice to the landowner of its intention to enter upon the land. The department is
 28 responsible for actual damages done to property."

29
 30 **Section 18.** Section 85-1-215, MCA, is amended to read:

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0147, as introduced

DESCRIPTION OF PROPOSED LEGISLATION: An act to revise the water resource administration of state water project laws; establish a self-supporting lease management program for water project lands; require appraisals on project lands being leased and require lease fees to be adjusted accordingly; create a project lands lease account; allow the Department of Natural Resources and Conservation to transfer or dispose of an inactive state water project without a determination of market value; clarify the Department's duty to maintain financial records of state water projects.

ASSUMPTIONS:

1. The provisions in this act will make the project lands lease program self sufficient. Project land lease funds will replace renewable resource funds that are included in the Executive Budget recommendation for this program.
2. Land sales associated with the transfer or disposal of inactive state water projects may generate some revenue, but it is impossible to estimate what they might be at this time.

FISCAL IMPACT:

| | <u>FY96</u> | <u>FY97</u> |
|--------------------------|-------------------|-------------------|
| | <u>Difference</u> | <u>Difference</u> |
| <u>Funding</u> | | |
| Renewable Resource (02) | (18,884) | (18,884) |
| Project Lands Lease (02) | 18,884 | 18,884 |

It is anticipated that revenue in FY97 may increase as mandated appraisals are completed, but the amount of increase is unknown at this time. The revenue will be used to fund the increased costs to do appraisals, surveys, and inspections, as well as the usual costs of administering these leases.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Transferring ownership or otherwise disposing of inactive state water projects will eliminate the liability and financial responsibility associated with them.

(continued on page 2)

Dave Lewis 1-20-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

John Hertel
JOHN HERTEL, PRIMARY SPONSOR DATE

Fiscal Note for SB0147, as introduced

SB 147

DEDICATION OF REVENUE:

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

No, lease funds would be used exclusively to finance the lease program.

- 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?

The use of a state special revenue fund will facilitate the self sufficiency of the project lands lease program so that people without leases do not feel that they are being compelled to provide financial support to lessees.

- 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)

It is assumed that lease revenues will be adequate to pay for the program.

- 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)

The dedicated revenue would enhance the legislature's ability to see lease revenues and expenditures charged against the project lands lease state special revenue fund.

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

The dedicated revenue would ensure that those directly benefitting from state lands leases would pay for the administrative costs of the 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 would administer the special revenue account with its other specialized accounts. No additional personnel would be required.

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6 ADMINISTRATION OF STATE WATER PROJECT LAWS; ESTABLISHING A SELF-SUPPORTING LEASE
7 MANAGEMENT PROGRAM FOR WATER PROJECT LANDS; ALLOWING THE DEPARTMENT OF NATURAL
8 RESOURCES AND CONSERVATION TO TRANSFER OR DISPOSE OF AN INACTIVE STATE WATER
9 PROJECT WITHOUT A DETERMINATION OF MARKET VALUE; CLARIFYING THE DEPARTMENT OF
10 NATURAL RESOURCES AND CONSERVATION'S DUTY TO MAINTAIN FINANCIAL RECORDS OF STATE
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17 The legislature intends that rules adopted by the department specify the procedure to be used by
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19 limitations, and requirements it will use as terms of the lease under the statutory guidelines provided in
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11 (1) growing of crops or grazing of livestock;

12 (2) establishment of responsibility for a lessee to pay the assessment of taxes for weed control;

13 (3) acquisition and use of water on project lands;

14 (4) leasing of project lands, EXCEPT FOR LEASE RENEWALS AND IMMEDIATE FAMILY
15 TRANSFERS, by competitive bidding and the establishment of bid procedures and bid deposits;

16 (5) process for giving notice and for cancellation, termination, and renewal of leases, including
17 existing leases on project lands;

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12 (4) A lease may not be subleased.

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14 **NEW SECTION. Section 8. Changes in lease use not authorized -- cancellation.** (1) During the
15 term of a lease, the use of the project lands may not be changed. A change in the use of the lands
16 automatically voids the lease.

17 (2) The department may cancel a lease for any of the following causes:

18 (a) fraud, misrepresentation, or concealment of facts relating to issuance of the lease, which if
19 known would have prevented its issuance in the form or to the party issued;

20 (b) subleasing project lands;

21 (c) placing of unauthorized improvements on project lands;

22 (d) using the lands for purposes other than those authorized by the lease;

23 (e) conviction of the lessee for a felony offense involving a dangerous drug, as defined in Title 50,
24 chapter 32, and involving the planting, propagating, cultivating, growing, harvesting, manufacturing,
25 compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging,
26 storing, or concealing of a dangerous drug on any portion of the lands;

27 (f) nonpayment of rental fees;

28 (g) violation of a lease condition;

29 (h) other causes that in the judgment of the department make the cancellation of the lease
30 necessary in order to do justice to all parties concerned or to protect the interests of the state.

1 (3) Cancellation of a lease under this section does not entitle the lessee to a refund of rentals paid
2 or exempt the lessee from the payment of rentals, penalties, or other compensation due the state.

3

4 **NEW SECTION. Section 9. Improvements authorized -- no compensation -- removal.** (1) A lessee
5 of project lands may place on the lands a reasonable amount of improvements directly related to the
6 necessary use of the lands as provided in the lease.

7 (2) The department is not liable to pay compensation to a lessee or a former lessee for
8 improvements made to project lands.

9 (3) A former lessee is responsible to reclaim project lands to the condition existing prior to the
10 placement of the improvements. If the former lessee fails to remove the improvements from the land within
11 60 days from the date of the expiration of the lease, all of the improvements become the property of the
12 department unless the department for good cause extends the time for removal of the improvements. The
13 department may require a former lessee to remove improvements made by the former lessee from project
14 lands at the former lessee's expense.

15

16 **NEW SECTION. Section 10. No pledge or mortgage of leasehold interest.** A lessee of project lands
17 may not pledge the lease or mortgage a leasehold interest in the project lands.

18

19 **NEW SECTION. Section 11. Project lands lease account.** There is established a project lands lease
20 account within the state special revenue fund of the state treasury. All lease fees collected under [sections
21 1 through 11] must be deposited in the account to pay the department's costs and expenses in
22 administering [sections 1 through 11].

23

24 **Section 12.** Section 85-1-202, MCA, is amended to read:

25 **"85-1-202. Department actions subject to board approval.** (1) The department may not, without
26 prior approval of the board:

27 (a) acquire by appropriation or otherwise a water right or interest ~~therein~~ in a water right; ~~and may~~
28 ~~not~~

29 (b) acquire real property or an interest ~~therein~~ in real property (except rights of access for the
30 purpose of construction, operation, or maintenance of works) or mortgage;

1 (c) ~~or otherwise~~ create a lien on the same water rights or real property;

2 (d) ~~or dispose of in any manner~~ water rights or real property or interest ~~therein~~ in water rights or
3 real property; ~~without prior approval of the board. The department may not~~

4 (e) construct or cause to be constructed or contract for the construction of works or projects;
5 ~~without prior approval of the board. The department may not or~~

6 (f) loan funds to a person or water ~~user~~ users' association for the purpose of constructing or
7 maintaining works ~~without prior approval of the board.~~

8 (2) A lease of project lands pursuant to [sections 1 through 11] is not subject to the approval of
9 the board."

10

11 **Section 13.** Section 85-1-204, MCA, is amended to read:

12 **"85-1-204. Department powers over state ~~waters~~ water.** (1) The department, ~~with the approval~~
13 ~~of the board,~~ may sell, lease, and otherwise dispose of ~~all waters which may be~~ water impounded under
14 this chapter, ~~and the~~ The water may be sold for the purpose of irrigation, development of power, watering
15 of stock, or ~~any other purpose~~ purposes. The department, ~~with the approval of the board,~~ may also lease
16 water under the state water leasing program established under the provisions of 85-2-141. To the extent
17 that it may be necessary to carry out this chapter and subject to a compliance with the other provisions
18 of this chapter, the department has full control of all the water of the state not under the exclusive control
19 of the United States and not vested in private ownership, and it shall take ~~such steps as may be necessary~~
20 the necessary actions to appropriate and conserve the ~~same~~ water for the use of the people. The authority
21 of the department conferred by this chapter extends and applies to rights to the natural flow of the ~~waters~~
22 water of this state ~~which that~~ it may acquire, ~~with the approval of the board,~~ by condemnation, purchase,
23 exchange, appropriation, or agreement.

24 (2) For the purpose of regulating the diversion of ~~those waters~~ water, the department may enter
25 upon the means and place of use of all appropriators for making surveys of respective rights and seasonal
26 needs.

27 (3) The department may take into consideration the decrees of the courts of this state having
28 jurisdiction ~~which that~~ purport to adjudicate the ~~waters~~ water of a stream or its tributaries, ~~and a~~ A fair,
29 reasonable, and equitable reconciliation ~~shall~~ must be made between the claimants asserting rights under
30 different decrees and between decreed rights and asserted rights of appropriation not adjudicated by ~~any~~

1 a court.

2 (4) The department, ~~at its discretion,~~ may hold hearings relating to the rights of respective
3 claimants after first giving ~~such~~ the notice as it considers appropriate, ~~and~~ The department shall make
4 findings of the date and quantity of appropriation and use of all claimants ~~which~~ that the department ~~will~~
5 ~~recognize~~ recognizes and ~~observe~~ observes in diverting the ~~waters which it~~ water that the department
6 owns. The department may ~~police~~ measure and distribute the water to the owner of the recognized
7 appropriation ~~the waters due him upon request and under terms agreed upon~~ under agreed-upon terms.

8 (5) The department, when engaged in controlling and dividing the natural flow of a stream under
9 the authority granted by this chapter, is exercising a police power of the state, and water commissioners
10 appointed by any court may not deprive the department of any of the ~~waters~~ water owned or administered
11 under agreement with respective owners. The owner of a prior right ~~contending~~ who contends that the
12 department is not recognizing and respecting the appropriation may resort to a court for the purpose of
13 determining whether or not the rights of the claimant have been invaded, and the department shall observe
14 the terms of the final decree.

15 (6) When the department impounds or acquires the right of appropriation of the ~~waters~~ water of
16 a stream it may divert or authorize the diversion at ~~any~~ a point on the stream or ~~any~~ a portion ~~thereof~~ of
17 the stream when it is done without injury to a prior appropriator."

18

19 **Section 14.** Section 85-1-206, MCA, is amended to read:

20 **"85-1-206. Construction of works by department.** (1) ~~Subject to the approval of the board, the~~
21 The department may construct works, with the cost of the construction to be paid wholly by means of or
22 with the proceeds of revenue bonds ~~hereinafter authorized~~ or of a grant or loan to aid in financing the
23 construction from the United States or any instrumentality or agency ~~thereof~~ of the United States and other
24 funds provided for the construction. Before constructing a project, the department shall estimate the cost
25 of the project, the cost of operation and maintenance, and the ~~revenues~~ revenue to be derived ~~therefrom~~
26 from the operation of the project. A project may not be constructed unless, according to the estimates,
27 the ~~revenues~~ revenue to be derived will be sufficient to pay the cost of operation and maintenance and the
28 principal and interest of loans or revenue bonds ~~which may be~~ issued for the cost of the project, ~~;~~
29 ~~however, in~~ In connection with the issuance of revenue bonds, the failure of the department to make the
30 estimates required by this section or to make them in proper form does not affect the validity or

1 enforceability of ~~these~~ the bonds or of the trust indenture, resolution, or other security ~~therefor~~ for the
2 bonds.

3 (2) Should the bid of the lowest responsible bidder on any capital improvement associated with
4 public works exceed the department estimates of the cost of the improvements by more than 5%, the
5 department shall obtain approval from the water ~~user~~ users' association, whenever an association is
6 involved, before the bid is accepted. ~~; however, capital~~ Capital improvements of an emergency nature
7 necessary to protect life or property or to supply immediate needs for water do not require ~~such~~ approval
8 of the water users' association.

9 (3) A purpose of this chapter is to meet, so far as possible, a statewide need for the conservation
10 and use of water through the construction and operation of projects ~~designed for these purposes~~. The
11 projects to be ~~finally~~ constructed ~~shall~~ must qualify as parts of the statewide program and ~~shall~~ must be
12 approved ~~by the board~~ upon the showing of ~~their~~ prospective ability to meet, through the sale of water or
13 other services, the cost of operation and maintenance and the principal and interest of loans and revenue
14 bonds issued to finance the construction. The failure ~~of the board~~ to determine the prospective ability of
15 a project does not affect the validity or enforceability of the bonds or of the trust indenture, resolution, or
16 other security ~~therefor~~ for the bonds."

17

18 **Section 15.** Section 85-1-209, MCA, is amended to read:

19 **"85-1-209. Acquisition of property by department.** (1) The department, ~~subject to the approval~~
20 ~~of the board under 85-1-202,~~ may acquire by purchase or exchange upon terms and conditions and in a
21 manner it considers proper and may acquire by condemnation, in accordance with laws applicable to the
22 condemnation of property for public use, any land, rights, water rights, easements, franchises, and other
23 property considered necessary for the construction, operation, and maintenance of works. Title to property
24 purchased or condemned ~~shall~~ must be taken in the name of the department. The department is under no
25 obligation to accept and pay for any property condemned under this chapter except from the funds provided
26 by this chapter. In any proceedings to condemn, orders may be made by the court ~~having~~ that has
27 jurisdiction of the suit, action, or proceeding as may be warranted by law and the facts.

28 (2) In a condemnation proceeding brought under the powers of eminent domain for the purpose
29 of carrying out this chapter, all persons interested in the title of or holding liens upon the property sought
30 to be acquired, as disclosed by the public records, ~~shall~~ must be made parties, and the court in the action

1 shall partition and distribute the damages awarded, if any, among those persons as their rights appear. If
 2 there is controversy between them, the court may direct the amount of the damage awarded to be paid into
 3 court to abide the result of further appropriate proceedings either at law or in equity.

4 (3) ~~The taking~~ Taking possession of the property sought to be condemned may not be delayed by
 5 reason of any dispute between the rival claimants or the failure to join any of them as a party to the
 6 proceedings in condemnation.

7 (4) If water rights are acquired or exercised by the department in connection with two or more
 8 works or projects, the department by order shall apportion or allocate to each of the works or projects ~~such~~
 9 the part of these the water rights as it may determine that the department determines is necessary. Upon
 10 the adoption of the order, ~~these the water rights shall be~~ are considered a part of each of the works or
 11 projects to the extent that the water rights have been ~~so~~ apportioned or allocated ~~thereto respectively~~."

12

13 **Section 16.** Section 85-1-210, MCA, is amended to read:

14 **"85-1-210. Disposal of property by department.** In addition to the powers conferred upon the
 15 department to sell, lease, or otherwise dispose of ~~waters~~ water for the purpose of irrigation, development
 16 of power, watering of stock, or other purposes, the department, ~~with the approval of the board,~~ may sell,
 17 lease, or otherwise dispose of ~~waters~~ water from its waterworks systems for public, domestic, industrial,
 18 and other uses and for fire protection. The department, ~~with the approval of the board,~~ may sell or
 19 otherwise dispose of a water project, after the discharge of all of the bonds issued to finance the
 20 construction or acquisition ~~thereof~~ of the project, if any, and of all interest, ~~thereon and~~ costs and expenses
 21 incurred in connection with any action or proceeding by or on behalf of the holders of the bonds. ~~The~~
 22 Except for a water project for which no water purchase contracts are managed by the department and for
 23 which no money is collected by the department, the department shall make a determination of the market
 24 value of ~~the a~~ a water project prior to its sale or other disposition. The department's determination of market
 25 value ~~shall~~ must consider all liens, encumbrances, and other limitations on the water project."

26

27 **Section 17.** Section 85-1-211, MCA, is amended to read:

28 **"85-1-211. Management of property -- water contracts.** (1) Subject to this chapter, the
 29 department may fix and establish the prices, rates, and charges at which the resources and facilities made
 30 available under this chapter may be sold and disposed of and enter into contracts and agreements and do

1 those things that in its judgment are necessary, convenient, or expedient for the accomplishment of the
2 purposes and objects of this chapter, under general rules and upon terms, limitations, and conditions as
3 it prescribes.

4 (2) The department shall enter into the contracts and fix and establish the prices, rates, and
5 charges ~~so as~~ to provide at all times funds that ~~will be~~ are sufficient to pay all costs of operation and
6 maintenance of the works authorized by this chapter, together with necessary repairs to the works, and
7 that will provide at all times sufficient funds to meet and pay the principal and interest of all bonds or loans
8 as they severally become due and payable.

9 (3) This chapter does not authorize any change, alteration, or revision of ~~those~~ the rates, prices,
10 or charges as established by a contract entered into under this chapter except as provided by the contract.

11 (4) A contract made by the department for the sale of water, use of water, water storage, or other
12 service or for the sale of property or facilities must provide that, in the event of a failure or default in the
13 payment of money specified in the contract to be paid to the department, the department may, upon notice
14 as is prescribed in the contract, terminate the contract and all obligations under the contract. The act of
15 the department in ceasing on default to furnish or deliver water, use of water, water storage, or other
16 service under the contract does not deprive the department of or limit a remedy provided by the contract
17 or by law for the recovery of money due or that may become due under the contract.

18 (5) ~~Subject to the approval of the board under 85-1-202, the~~ The department may sell, transfer to
19 water ~~user~~ users' associations, abandon, lease or rent, or otherwise dispose of any rights-of-way,
20 easements, properties, or interests ~~or lease or rent the same~~ or otherwise take and receive the income or
21 profit and revenue ~~therefrom~~ from them without regard to other laws providing for the disposition of state
22 property. Except for a water project for which no water management contracts are managed by the
23 department and for which no money is collected by the department, Prior ~~Prior~~ prior to the department's sale,
24 transfer, or other disposition, a determination must be made by the department as to the market value of
25 the rights-of-way, easements, properties, or interests to be sold, transferred, abandoned, or otherwise
26 disposed of. The department's determination of market value must consider all liens, encumbrances, and
27 other limitations on the project properties or interests.

28 (6) (a) The department shall attempt to dispose of its canal projects by June 30, 1995. The canal
29 projects to be disposed of include the:

30 (i) Columbus canal;

- 1 (ii) Delphia-Melstone canals;
 2 (iii) Hysham pumping canals;
 3 (iv) Lewistown ditch;
 4 (v) Livingston ditch;
 5 (vi) Florence canal;
 6 (vii) Paradise canal;
 7 (viii) Park Branch canal;
 8 (ix) Sidney pumping canals;
 9 (x) South Side canal;
 10 (xi) Vigilante canal; and
 11 (xii) West Bench canal.

12 (b) The department may dispose of a canal project by sale, transfer to a water users' association,
 13 abandonment, or other legal conveyance. If there is an existing water users' association on the canal
 14 project, the provisions of ~~85-6-109(5)~~ 85-6-109 must be complied with in the disposal of the canal project.
 15 The department shall give preference to existing water users' associations operating and maintaining the
 16 canal project.

17 (c) Upon the sale or transfer of a canal project, the department shall either cancel or write off from
 18 the accounts receivable carried on the books of the department a sum not to exceed any previous 1-year
 19 cost of operating and maintaining the canal project or make a payment not to exceed any previous 1-year
 20 cost of operating and maintaining the canal project. For a canal project not disposed of by June 30, 1995,
 21 the water users of the canal project are responsible for the department's administrative costs and the actual
 22 costs of operation and maintenance of the canal project.

23 (7) An employee or agent of the department authorized by the director may enter upon any land
 24 to carry out the purposes of this section, including but not limited to entry to make an inspection of the
 25 canal project that the department considers necessary ~~of the canal project~~, entry to salvage or remove
 26 project property, and entry to make physical alterations to canal project property. The department shall
 27 give reasonable notice to the landowner of its intention to enter upon the land. The department is
 28 responsible for actual damages done to property."
 29

30 **Section 18.** Section 85-1-215, MCA, is amended to read:

1 "85-1-215. **Department duties -- records and operations.** The department shall keep ~~full and~~
 2 ~~complete accounts concerning all matters and things relating to the works and annually shall prepare~~
 3 ~~balance sheets and income and profit and loss statements~~ accounting records of each project and by July
 4 1 of each year prepare a financial statement showing the financial ~~condition~~ status of each project and file
 5 ~~copies thereof with the secretary of state.~~ All books and papers pertaining to ~~all~~ matters provided for in
 6 this chapter shall at all reasonable times be open to the inspection of ~~any party~~ an interested party or ~~any~~
 7 citizen of the state. Except as otherwise provided in this chapter, the department has full charge and
 8 control of the construction, operation, and maintenance of the works and the collection of all rates,
 9 charges, and ~~revenues of whatsoever character therefrom~~ revenue from them. The department shall
 10 proceed immediately with the construction of the works ~~upon~~ as soon as funds ~~being~~ are made available
 11 ~~therefor~~ and shall ~~prosecute~~ complete the works ~~to completion~~ as rapidly as possible."

12

13 NEW SECTION. Section 19. Severability. If a part of [this act] is invalid, all valid parts that are
 14 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
 15 applications, the part remains in effect in all valid applications that are severable from the invalid
 16 applications.

17

18 NEW SECTION. Section 20. Codification instruction. [Sections 1 through 11] are intended to be
 19 codified as an integral part of Title 85, chapter 1, and the provisions of Title 85, chapter 1, apply to
 20 [sections 1 through 11].

21

22 NEW SECTION. Section 21. Effective date. [This act] is effective July 1, 1995.

23

-END-

1 SENATE BILL NO. 147

2 INTRODUCED BY HERTEL

3 BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE WATER RESOURCE
6 ADMINISTRATION OF STATE WATER PROJECT LAWS; ESTABLISHING A SELF-SUPPORTING LEASE
7 MANAGEMENT PROGRAM FOR WATER PROJECT LANDS; ALLOWING THE DEPARTMENT OF NATURAL
8 RESOURCES AND CONSERVATION TO TRANSFER OR DISPOSE OF AN INACTIVE STATE WATER
9 PROJECT WITHOUT A DETERMINATION OF MARKET VALUE; CLARIFYING THE DEPARTMENT OF
10 NATURAL RESOURCES AND CONSERVATION'S DUTY TO MAINTAIN FINANCIAL RECORDS OF STATE
11 WATER PROJECTS; AMENDING SECTIONS 85-1-202, 85-1-204, 85-1-206, 85-1-209, 85-1-210,
12 85-1-211, AND 85-1-215, MCA; AND PROVIDING AN EFFECTIVE DATE."

13
14 STATEMENT OF INTENT

15 A statement of intent is necessary for this bill because [section 3] authorizes the department of
16 natural resources and conservation to adopt rules implementing the leasing program established in this bill.

17 The legislature intends that rules adopted by the department specify the procedure to be used by
18 the department in determining how it will lease project lands and specify the standards, conditions,
19 limitations, and requirements it will use as terms of the lease under the statutory guidelines provided in
20 [section 3].

21
22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

23
24 **NEW SECTION. Section 1. Statement of policy.** It is the policy of the state that in the interest of
25 accomplishing a self-supporting program from the leasing of project lands, the project lands must be
26 appraised by the department at least once during the term of each lease. The purpose of the appraisals
27 is to determine the lease value of project lands and the general condition of the lands.

28
29 **NEW SECTION. Section 2. Leases authorized.** (1) The department may lease all project lands
30 appurtenant to a state-owned water project for purposes that the department considers appropriate.

1 (2) Only an individual person, a husband and wife, or a federal, state, or local entity may lease
2 project lands or hold more than one lease to project lands.

3 (3) An association, partnership, corporation, or other nongovernmental entity may not lease project
4 lands.

5 (4) A lease of project lands may not exceed 10 years.

6 (5) All cabinsite leases issued prior to July 1, 1994, expire March 31, 1996.

7
8 **NEW SECTION. Section 3. Rulemaking.** The department may adopt rules necessary to implement
9 and administer the leasing of project lands. These rules may include but are not limited to rules governing
10 the:

11 (1) growing of crops or grazing of livestock;

12 (2) establishment of responsibility for a lessee to pay the assessment of taxes for weed control;

13 (3) acquisition and use of water on project lands;

14 (4) leasing of project lands, EXCEPT FOR LEASE RENEWALS AND IMMEDIATE FAMILY
15 TRANSFERS, by competitive bidding and the establishment of bid procedures and bid deposits;

16 (5) process for giving notice and for cancellation, termination, and renewal of leases, including
17 existing leases on project lands;

18 (6) general form of the lease and the form and conditions of a bond when the department considers
19 a bond necessary;

20 (7) changes or modifications in lease conditions or lease use; and

21 (8) placement and removal of improvements directly related to the necessary use of the project
22 lands.

23
24 **NEW SECTION. Section 4. Appraisal of project lands -- adjustment of lease fee.** The department
25 shall appraise project lands owned by the department and shall maintain records of the appraisals. Not less
26 than once during the term of a lease, the department shall reappraise the project lands and adjust the lease
27 fee accordingly. THE DEPARTMENT MAY NOT INCREASE A LEASE FEE FOR A CURRENT LESSEE MORE
28 THAN 2% A YEAR DURING ANY PERIOD OF 10 CONSECUTIVE YEARS.

29
30 **NEW SECTION. Section 5. Full market value required.** The department shall determine the full

1 market value of project lands. The department may not accept a bid that is below full market value.

2

3 **NEW SECTION. Section 6. Withdrawal of lands from leasing.** The department may withdraw
4 project lands from leasing for a period of time as the department determines to be in the best interest of
5 the state.

6

7 **NEW SECTION. Section 7. Assignment of leases -- subleasing not allowed.** (1) A lease of project
8 lands may be assigned on forms prescribed by the department. An assignment is not binding on the
9 department unless the assignment is filed with and approved by the department. An assignment fee must
10 be paid to the department at the time of filing the assignment.

11 (2) An assignment of a lease may be made only to a person who qualifies for a lease under [section
12 2].

13 (3) The department may not approve a contingent or collateral assignment of a lease.

14 (4) A lease may not be subleased.

15

16 **NEW SECTION. Section 8. Changes in lease use not authorized -- cancellation.** (1) During the
17 term of a lease, the use of the project lands may not be changed. A change in the use of the lands
18 automatically voids the lease.

19 (2) The department may cancel a lease for any of the following causes:

20 (a) fraud, misrepresentation, or concealment of facts relating to issuance of the lease, which if
21 known would have prevented its issuance in the form or to the party issued;

22 (b) subleasing project lands;

23 (c) placing of unauthorized improvements on project lands;

24 (d) using the lands for purposes other than those authorized by the lease;

25 (e) conviction of the lessee for a felony offense involving a dangerous drug, as defined in Title 50,
26 chapter 32, and involving the planting, propagating, cultivating, growing, harvesting, manufacturing,
27 compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging,
28 storing, or concealing of a dangerous drug on any portion of the lands;

29 (f) nonpayment of rental fees;

30 (g) violation of a lease condition;

1 (h) other causes that in the judgment of the department make the cancellation of the lease
2 necessary in order to do justice to all parties concerned or to protect the interests of the state.

3 (3) Cancellation of a lease under this section does not entitle the lessee to a refund of rentals paid
4 or exempt the lessee from the payment of rentals, penalties, or other compensation due the state.

5

6 **NEW SECTION. Section 9. Improvements authorized -- no compensation -- removal.** (1) A lessee
7 of project lands may place on the lands a reasonable amount of improvements directly related to the
8 necessary use of the lands as provided in the lease.

9 (2) The department is not liable to pay compensation to a lessee or a former lessee for
10 improvements made to project lands.

11 (3) A former lessee is responsible to reclaim project lands to the condition existing prior to the
12 placement of the improvements. If the former lessee fails to remove the improvements from the land within
13 60 days from the date of the expiration of the lease, all of the improvements become the property of the
14 department unless the department for good cause extends the time for removal of the improvements. The
15 department may require a former lessee to remove improvements made by the former lessee from project
16 lands at the former lessee's expense.

17

18 **NEW SECTION. Section 10. No pledge or mortgage of leasehold interest.** A lessee of project lands
19 may not pledge the lease or mortgage a leasehold interest in the project lands.

20

21 **NEW SECTION. Section 11. Project lands lease account.** There is established a project lands lease
22 account within the state special revenue fund of the state treasury. All lease fees collected under [sections
23 1 through 11] must be deposited in the account to pay the department's costs and expenses in
24 administering [sections 1 through 11].

25

26 **Section 12.** Section 85-1-202, MCA, is amended to read:

27 **"85-1-202. Department actions subject to board approval.** (1) The department may not, without
28 prior approval of the board:

29 (a) acquire by appropriation or otherwise a water right or interest ~~therein~~ in a water right; and may
30 ~~not~~

1 **(b)** acquire real property or an interest ~~therein~~ in real property (except rights of access for the
2 purpose of construction, operation, or maintenance of works) or mortgage;

3 **(c)** ~~or otherwise~~ create a lien on ~~the same~~ water rights or real property;

4 **(d)** ~~or dispose of in any manner~~ water rights or real property or interest ~~therein~~ in water rights or
5 real property; ~~without prior approval of the board. The department may not~~

6 **(e)** construct or cause to be constructed or contract for the construction of works or projects;
7 ~~without prior approval of the board. The department may not or~~

8 **(f)** loan funds to a person or water ~~user~~ users' association for the purpose of constructing or
9 maintaining works ~~without prior approval of the board.~~

10 **(2)** A lease of project lands pursuant to [sections 1 through 11] is not subject to the approval of
11 the board."

12
13 **Section 13.** Section 85-1-204, MCA, is amended to read:

14 **"85-1-204. Department powers over state waters water.** (1) The department, ~~with the approval~~
15 ~~of the board,~~ may sell, lease, and otherwise dispose of ~~all waters which may be~~ water impounded under
16 this chapter, ~~and the.~~ The water may be sold for the purpose of irrigation, development of power, watering
17 of stock, or ~~any other purpose~~ purposes. The department, ~~with the approval of the board,~~ may also lease
18 water under the state water leasing program established under the provisions of 85-2-141. To the extent
19 that it may be necessary to carry out this chapter and subject to a compliance with the other provisions
20 of this chapter, the department has full control of all the water of the state not under the exclusive control
21 of the United States and not vested in private ownership, and it shall take ~~such steps as may be necessary~~
22 the necessary actions to appropriate and conserve the ~~same~~ water for the use of the people. The authority
23 of the department conferred by this chapter extends and applies to rights to the natural flow of the ~~waters~~
24 water of this state ~~which that~~ it may acquire, ~~with the approval of the board,~~ by condemnation, purchase,
25 exchange, appropriation, or agreement.

26 (2) For the purpose of regulating the diversion of ~~these waters~~ water, the department may enter
27 upon the means and place of use of all appropriators for making surveys of respective rights and seasonal
28 needs.

29 (3) The department may take into consideration the decrees of the courts of this state having
30 jurisdiction ~~which that~~ purport to adjudicate the ~~waters~~ water of a stream or its tributaries, ~~and a.~~ A fair,

1 reasonable, and equitable reconciliation ~~shall~~ must be made between the claimants asserting rights under
 2 different decrees and between decreed rights and asserted rights of appropriation not adjudicated by any
 3 a court.

4 (4) The department, ~~at its discretion,~~ may hold hearings relating to the rights of respective
 5 claimants after first giving ~~such~~ the notice ~~as~~ it considers appropriate. ~~and~~ The department shall make
 6 findings of the date and quantity of appropriation and use of all claimants ~~which~~ that the department ~~will~~
 7 ~~recognize~~ recognizes and ~~observe~~ observes in diverting the ~~waters~~ water ~~which it~~ that the department
 8 owns. The department may ~~police~~ measure and distribute the water to the owner of the recognized
 9 appropriation ~~the waters due him upon request and under terms agreed upon~~ under agreed-upon terms.

10 (5) The department, when engaged in controlling and dividing the natural flow of a stream under
 11 the authority granted by this chapter, is exercising a police power of the state, and water commissioners
 12 appointed by any court may not deprive the department of any of the ~~waters~~ water owned or administered
 13 under agreement with respective owners. The owner of a prior right ~~contending~~ who contends that the
 14 department is not recognizing and respecting the appropriation may resort to a court for the purpose of
 15 determining whether or not the rights of the claimant have been invaded, and the department shall observe
 16 the terms of the final decree.

17 (6) When the department impounds or acquires the right of appropriation of the ~~waters~~ water of
 18 a stream it may divert or authorize the diversion at ~~any~~ a point on the stream or ~~any~~ a portion ~~thereof~~ of
 19 the stream when it is done without injury to a prior appropriator."

20

21 **Section 14.** Section 85-1-206, MCA, is amended to read:

22 **"85-1-206. Construction of works by department.** (1) ~~Subject to the approval of the board, the~~
 23 The department may construct works, with the cost of the construction to be paid wholly by means of or
 24 with the proceeds of revenue bonds ~~hereinafter authorized~~ or of a grant or loan to aid in financing the
 25 construction from the United States or any instrumentality or agency ~~thereof~~ of the United States and other
 26 funds provided for the construction. Before constructing a project, the department shall estimate the cost
 27 of the project, the cost of operation and maintenance, and the ~~revenues~~ revenue to be derived ~~therefrom~~
 28 from the operation of the project. A project may not be constructed unless, according to the estimates,
 29 the ~~revenues~~ revenue to be derived will be sufficient to pay the cost of operation and maintenance and the
 30 principal and interest of loans or revenue bonds ~~which may be~~ issued for the cost of the project. ;

1 ~~however, in~~ in connection with the issuance of revenue bonds, the failure of the department to make the
 2 estimates required by this section or to make them in proper form does not affect the validity or
 3 enforceability of ~~these~~ the bonds or of the trust indenture, resolution, or other security ~~therefor~~ for the
 4 bonds.

5 (2) Should the bid of the lowest responsible bidder on any capital improvement associated with
 6 public works exceed the department estimates of the cost of the improvements by more than 5%, the
 7 department shall obtain approval from the water ~~user~~ users' association, whenever an association is
 8 involved, before the bid is accepted. ~~however, capital~~ Capital improvements of an emergency nature
 9 necessary to protect life or property or to supply immediate needs for water do not require ~~such~~
 10 of the water users' association.

11 (3) A purpose of this chapter is to meet, so far as possible, a statewide need for the conservation
 12 and use of water through the construction and operation of projects ~~designed for those purposes.~~ The
 13 projects to be ~~finally~~ constructed ~~shall~~ must qualify as parts of the statewide program and ~~shall~~ must
 14 approved ~~by the board~~ upon the showing of ~~their~~ prospective ability to meet, through the sale of water or
 15 other services, the cost of operation and maintenance and the principal and interest of loans and revenue
 16 bonds issued to finance the construction. The failure ~~of the board~~ to determine the prospective ability of
 17 a project does not affect the validity or enforceability of the bonds or of the trust indenture, resolution, or
 18 other security ~~therefor~~ for the bonds."

19

20 **Section 15.** Section 85-1-209, MCA, is amended to read:

21 **"85-1-209. Acquisition of property by department.** (1) The department, ~~subject to the approval~~
 22 ~~of the board under 85-1-202,~~ may acquire by purchase or exchange upon terms and conditions and in a
 23 manner it considers proper and may acquire by condemnation, in accordance with laws applicable to the
 24 condemnation of property for public use, any land, rights, water rights, easements, franchises, and other
 25 property considered necessary for the construction, operation, and maintenance of works. Title to property
 26 purchased or condemned ~~shall~~ must be taken in the name of the department. The department is under no
 27 obligation to accept and pay for any property condemned under this chapter except from the funds provided
 28 by this chapter. In any proceedings to condemn, orders may be made by the court ~~having~~ that has
 29 jurisdiction of the suit, action, or proceeding as may be warranted by law and the facts.

30 (2) In a condemnation proceeding brought under the powers of eminent domain for the purpose

1 of carrying out this chapter, all persons interested in the title of or holding liens upon the property sought
 2 to be acquired, as disclosed by the public records, ~~shall~~ must be made parties, and the court in the action
 3 shall partition and distribute the damages awarded, if any, among those persons as their rights appear. If
 4 there is controversy between them, the court may direct the amount of the damage awarded to be paid into
 5 court to abide the result of further appropriate proceedings either at law or in equity.

6 (3) ~~The taking~~ Taking possession of the property sought to be condemned may not be delayed by
 7 reason of any dispute between the rival claimants or the failure to join any of them as a party to the
 8 proceedings in condemnation.

9 (4) If water rights are acquired or exercised by the department in connection with two or more
 10 works or projects, the department by order shall apportion or allocate to each of the works or projects ~~such~~
 11 the part of these the water rights as it may determine that the department determines is necessary. Upon
 12 the adoption of the order, ~~these the water rights shall be~~ are considered a part of each of the works or
 13 projects to the extent that the water rights have been ~~se~~ apportioned or allocated ~~thereto respectively~~."

14

15 **Section 16.** Section 85-1-210, MCA, is amended to read:

16 **"85-1-210. Disposal of property by department.** In addition to the powers conferred upon the
 17 department to sell, lease, or otherwise dispose of ~~waters~~ water for the purpose of irrigation, development
 18 of power, watering of stock, or other purposes, the department, ~~with the approval of the board,~~ may sell,
 19 lease, or otherwise dispose of ~~waters~~ water from its waterworks systems for public, domestic, industrial,
 20 and other uses and for fire protection. The department, ~~with the approval of the board,~~ may sell or
 21 otherwise dispose of a water project, after the discharge of all of the bonds issued to finance the
 22 construction or acquisition ~~thereof~~ of the project, if any, and of all interest, ~~thereon and~~ costs and expenses
 23 incurred in connection with any action or proceeding by or on behalf of the holders of the bonds. ~~The~~
 24 Except for a water project for which no water purchase contracts are managed by the department and for
 25 which no money is collected by the department, the department shall make a determination of the market
 26 value of ~~the a~~ a water project prior to its sale or other disposition. The department's determination of market
 27 value ~~shall~~ must consider all liens, encumbrances, and other limitations on the water project."

28

29 **Section 17.** Section 85-1-211, MCA, is amended to read:

30 **"85-1-211. Management of property -- water contracts.** (1) Subject to this chapter, the

1 department may fix and establish the prices, rates, and charges at which the resources and facilities made
2 available under this chapter may be sold and disposed of and enter into contracts and agreements and do
3 those things that in its judgment are necessary, convenient, or expedient for the accomplishment of the
4 purposes and objects of this chapter, under general rules and upon terms, limitations, and conditions as
5 it prescribes.

6 (2) The department shall enter into the contracts and fix and establish the prices, rates, and
7 charges ~~so as~~ to provide at all times funds that ~~will be~~ are sufficient to pay all costs of operation and
8 maintenance of the works authorized by this chapter, together with necessary repairs to the works, and
9 that will provide at all times sufficient funds to meet and pay the principal and interest of all bonds or loans
10 as they severally become due and payable.

11 (3) This chapter does not authorize any change, alteration, or revision of ~~these~~ the rates, prices,
12 or charges as established by a contract entered into under this chapter except as provided by the contract.

13 (4) A contract made by the department for the sale of water, use of water, water storage, or other
14 service or for the sale of property or facilities must provide that, in the event of a failure or default in the
15 payment of money specified in the contract to be paid to the department, the department may, upon notice
16 as is prescribed in the contract, terminate the contract and all obligations under the contract. The act of
17 the department in ceasing on default to furnish or deliver water, use of water, water storage, or other
18 service under the contract does not deprive the department of or limit a remedy provided by the contract
19 or by law for the recovery of money due or that may become due under the contract.

20 (5) ~~Subject to the approval of the board under 85-1-202, the~~ The department may sell, transfer to
21 water ~~user~~ users' associations, abandon, lease or rent, or otherwise dispose of any rights-of-way,
22 easements, properties, or interests ~~or lease or rent the same~~ or otherwise take and receive the income or
23 profit and revenue ~~therefrom~~ from them without regard to other laws providing for the disposition of state
24 property. Except for a water project for which no water management contracts are managed by the
25 department and for which no money is collected by the department, ~~Prior~~ prior to the department's sale,
26 transfer, or other disposition, a determination must be made by the department as to the market value of
27 the rights-of-way, easements, properties, or interests to be sold, transferred, abandoned, or otherwise
28 disposed of. The department's determination of market value must consider all liens, encumbrances, and
29 other limitations on the project properties or interests.

30 (6) (a) The department shall attempt to dispose of its canal projects by June 30, 1995. The canal

1 projects to be disposed of include the:

2 (i) Columbus canal;

3 (ii) Delphia-Melstone canals;

4 (iii) Hysham pumping canals;

5 (iv) Lewistown ditch;

6 (v) Livingston ditch;

7 (vi) Florence canal;

8 (vii) Paradise canal;

9 (viii) Park Branch canal;

10 (ix) Sidney pumping canals;

11 (x) South Side canal;

12 (xi) Vigilante canal; and

13 (xii) West Bench canal.

14 (b) The department may dispose of a canal project by sale, transfer to a water users' association,
15 abandonment, or other legal conveyance. If there is an existing water users' association on the canal
16 project, the provisions of ~~85-6-109(5)~~ 85-6-109 must be complied with in the disposal of the canal project.
17 The department shall give preference to existing water users' associations operating and maintaining the
18 canal project.

19 (c) Upon the sale or transfer of a canal project, the department shall either cancel or write off from
20 the accounts receivable carried on the books of the department a sum not to exceed any previous 1-year
21 cost of operating and maintaining the canal project or make a payment not to exceed any previous 1-year
22 cost of operating and maintaining the canal project. For a canal project not disposed of by June 30, 1995,
23 the water users of the canal project are responsible for the department's administrative costs and the actual
24 costs of operation and maintenance of the canal project.

25 (7) An employee or agent of the department authorized by the director may enter upon any land
26 to carry out the purposes of this section, including but not limited to entry to make an inspection of the
27 canal project that the department considers necessary ~~of the canal project~~, entry to salvage or remove
28 project property, and entry to make physical alterations to canal project property. The department shall
29 give reasonable notice to the landowner of its intention to enter upon the land. The department is
30 responsible for actual damages done to property."

1 **Section 18.** Section 85-1-215, MCA, is amended to read:

2 "**85-1-215. Department duties -- records and operations.** The department shall keep ~~full and~~
3 ~~complete accounts concerning all matters and things relating to the works and annually shall prepare~~
4 ~~balance sheets and income and profit and loss statements~~ accounting records of each project and by July
5 1 of each year prepare a financial statement showing the financial ~~condition~~ status of each project ~~and file~~
6 ~~copies thereof with the secretary of state.~~ All books and papers pertaining to ~~all~~ matters provided for in
7 this chapter shall at all reasonable times be open to the inspection of ~~any party~~ an interested party or ~~any~~
8 citizen of the state. Except as otherwise provided in this chapter, the department has full charge and
9 control of the construction, operation, and maintenance of the works and the collection of all rates,
10 charges, and ~~revenues of whatever character therefrom~~ revenue from them. The department shall
11 proceed immediately with the construction of the works ~~upon~~ as soon as funds ~~being~~ are made available
12 ~~therefor~~ and shall ~~prosecute~~ complete the works ~~to completion~~ as rapidly as possible."

13

14 NEW SECTION. **Section 19. Severability.** If a part of [this act] is invalid, all valid parts that are
15 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
16 applications, the part remains in effect in all valid applications that are severable from the invalid
17 applications.

18

19 NEW SECTION. **Section 20. Codification instruction.** [Sections 1 through 11] are intended to be
20 codified as an integral part of Title 85, chapter 1, and the provisions of Title 85, chapter 1, apply to
21 [sections 1 through 11].

22

23 NEW SECTION. **Section 21. Effective date.** [This act] is effective July 1, 1995.

24

-END-



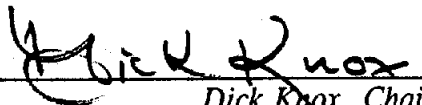
HOUSE STANDING COMMITTEE REPORT

March 9, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report that Senate Bill 147 (third reading copy -- blue) be concurred in as amended.

Signed:


Dick Knox, Chair

Carried by: Rep. Tash

And, that such amendments read:

1. Page 2, lines 1 through 4.
Strike: subsections (2) and (3) in their entirety
Renumber: subsequent subsections
2. Page 2, line 14.
Strike: "IMMEDIATE FAMILY"
3. Page 3, lines 11 and 12.
Strike: subsection (2) in its entirety
Renumber: subsequent subsections
4. Page 5.
Following: line 5
Insert: "(e) sell, lease, or otherwise dispose of water impounded under this chapter;"
Renumber: subsequent subsections

-END-

SB 147

Committee Vote:
Yes 17, No 1

HOUSE

1 SENATE BILL NO. 147

2 INTRODUCED BY HERTEL

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

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE WATER RESOURCE
6 ADMINISTRATION OF STATE WATER PROJECT LAWS; ESTABLISHING A SELF-SUPPORTING LEASE
7 MANAGEMENT PROGRAM FOR WATER PROJECT LANDS; ALLOWING THE DEPARTMENT OF NATURAL
8 RESOURCES AND CONSERVATION TO TRANSFER OR DISPOSE OF AN INACTIVE STATE WATER
9 PROJECT WITHOUT A DETERMINATION OF MARKET VALUE; CLARIFYING THE DEPARTMENT OF
10 NATURAL RESOURCES AND CONSERVATION'S DUTY TO MAINTAIN FINANCIAL RECORDS OF STATE
11 WATER PROJECTS; AMENDING SECTIONS 85-1-202, 85-1-204, 85-1-206, 85-1-209, 85-1-210,
12 85-1-211, AND 85-1-215, MCA; AND PROVIDING AN EFFECTIVE DATE."

13
14 STATEMENT OF INTENT

15 A statement of intent is necessary for this bill because [section 3] authorizes the department of
16 natural resources and conservation to adopt rules implementing the leasing program established in this bill.

17 The legislature intends that rules adopted by the department specify the procedure to be used by
18 the department in determining how it will lease project lands and specify the standards, conditions,
19 limitations, and requirements it will use as terms of the lease under the statutory guidelines provided in
20 [section 3].

21
22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
23

24 **NEW SECTION. Section 1. Statement of policy.** It is the policy of the state that in the interest of
25 accomplishing a self-supporting program from the leasing of project lands, the project lands must be
26 appraised by the department at least once during the term of each lease. The purpose of the appraisals
27 is to determine the lease value of project lands and the general condition of the lands.
28

29 **NEW SECTION. Section 2. Leases authorized.** (1) The department may lease all project lands
30 appurtenant to a state-owned water project for purposes that the department considers appropriate.

1 ~~(2) Only an individual person, a husband and wife, or a federal, state, or local entity may lease~~
2 ~~project lands or hold more than one lease to project lands.~~

3 ~~(3) An association, partnership, corporation, or other nongovernmental entity may not lease project~~
4 ~~lands.~~

5 ~~(4)~~ (2) A lease of project lands may not exceed 10 years.

6 ~~(5)~~ (3) All cabinsite leases issued prior to July 1, 1994, expire March 31, 1996.

7

8 **NEW SECTION. Section 3. Rulemaking.** The department may adopt rules necessary to implement
9 and administer the leasing of project lands. These rules may include but are not limited to rules governing
10 the:

11 (1) growing of crops or grazing of livestock;

12 (2) establishment of responsibility for a lessee to pay the assessment of taxes for weed control;

13 (3) acquisition and use of water on project lands;

14 (4) leasing of project lands, EXCEPT FOR LEASE RENEWALS AND IMMEDIATE FAMILY
15 TRANSFERS, by competitive bidding and the establishment of bid procedures and bid deposits;

16 (5) process for giving notice and for cancellation, termination, and renewal of leases, including
17 existing leases on project lands;

18 (6) general form of the lease and the form and conditions of a bond when the department considers
19 a bond necessary;

20 (7) changes or modifications in lease conditions or lease use; and

21 (8) placement and removal of improvements directly related to the necessary use of the project
22 lands.

23

24 **NEW SECTION. Section 4. Appraisal of project lands -- adjustment of lease fee.** The department
25 shall appraise project lands owned by the department and shall maintain records of the appraisals. Not less
26 than once during the term of a lease, the department shall reappraise the project lands and adjust the lease
27 fee accordingly. THE DEPARTMENT MAY NOT INCREASE A LEASE FEE FOR A CURRENT LESSEE MORE
28 THAN 2% A YEAR DURING ANY PERIOD OF 10 CONSECUTIVE YEARS.

29

30 **NEW SECTION. Section 5. Full market value required.** The department shall determine the full

1 market value of project lands. The department may not accept a bid that is below full market value.

2

3 NEW SECTION. **Section 6. Withdrawal of lands from leasing.** The department may withdraw
4 project lands from leasing for a period of time as the department determines to be in the best interest of
5 the state.

6

7 NEW SECTION. **Section 7. Assignment of leases -- subleasing not allowed.** (1) A lease of project
8 lands may be assigned on forms prescribed by the department. An assignment is not binding on the
9 department unless the assignment is filed with and approved by the department. An assignment fee must
10 be paid to the department at the time of filing the assignment.

11 ~~(2) An assignment of a lease may be made only to a person who qualifies for a lease under section~~

12 ~~21.~~

13 ~~(3) (2)~~ The department may not approve a contingent or collateral assignment of a lease.

14 ~~(4) (3)~~ A lease may not be subleased.

15

16 NEW SECTION. **Section 8. Changes in lease use not authorized -- cancellation.** (1) During the
17 term of a lease, the use of the project lands may not be changed. A change in the use of the lands
18 automatically voids the lease.

19 (2) The department may cancel a lease for any of the following causes:

20 (a) fraud, misrepresentation, or concealment of facts relating to issuance of the lease, which if
21 known would have prevented its issuance in the form or to the party issued;

22 (b) subleasing project lands;

23 (c) placing of unauthorized improvements on project lands;

24 (d) using the lands for purposes other than those authorized by the lease;

25 (e) conviction of the lessee for a felony offense involving a dangerous drug, as defined in Title 50,
26 chapter 32, and involving the planting, propagating, cultivating, growing, harvesting, manufacturing,
27 compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging,
28 storing, or concealing of a dangerous drug on any portion of the lands;

29 (f) nonpayment of rental fees;

30 (g) violation of a lease condition;

1 (h) other causes that in the judgment of the department make the cancellation of the lease
2 necessary in order to do justice to all parties concerned or to protect the interests of the state.

3 (3) Cancellation of a lease under this section does not entitle the lessee to a refund of rentals paid
4 or exempt the lessee from the payment of rentals, penalties, or other compensation due the state.

5

6 **NEW SECTION. Section 9. Improvements authorized -- no compensation -- removal.** (1) A lessee
7 of project lands may place on the lands a reasonable amount of improvements directly related to the
8 necessary use of the lands as provided in the lease.

9 (2) The department is not liable to pay compensation to a lessee or a former lessee for
10 improvements made to project lands.

11 (3) A former lessee is responsible to reclaim project lands to the condition existing prior to the
12 placement of the improvements. If the former lessee fails to remove the improvements from the land within
13 60 days from the date of the expiration of the lease, all of the improvements become the property of the
14 department unless the department for good cause extends the time for removal of the improvements. The
15 department may require a former lessee to remove improvements made by the former lessee from project
16 lands at the former lessee's expense.

17

18 **NEW SECTION. Section 10. No pledge or mortgage of leasehold interest.** A lessee of project lands
19 may not pledge the lease or mortgage a leasehold interest in the project lands.

20

21 **NEW SECTION. Section 11. Project lands lease account.** There is established a project lands lease
22 account within the state special revenue fund of the state treasury. All lease fees collected under [sections
23 1 through 11] must be deposited in the account to pay the department's costs and expenses in
24 administering [sections 1 through 11].

25

26 **Section 12.** Section 85-1-202, MCA, is amended to read:

27 **"85-1-202. Department actions subject to board approval.** (1) The department may not, without
28 prior approval of the board:

29 (a) acquire by appropriation or otherwise a water right or interest ~~therein~~ in a water right; ~~and may~~
30 ~~not~~

1 **(b)** acquire real property or an interest ~~therein~~ in real property (except rights of access for the
2 purpose of construction, operation, or maintenance of works) or mortgage;

3 **(c)** ~~or otherwise~~ create a lien on ~~the same~~ water rights or real property;

4 **(d)** ~~or~~ dispose of ~~in any manner~~ water rights or real property or interest ~~therein~~ in water rights or
5 real property; ~~without prior approval of the board. The department may not~~

6 **(E) SELL, LEASE, OR OTHERWISE DISPOSE OF WATER IMPOUNDED UNDER THIS CHAPTER;**

7 **(e)(F)** construct or cause to be constructed or contract for the construction of works or projects;
8 ~~without prior approval of the board. The department may not or~~

9 **(f)(G)** loan funds to a person or water ~~user~~ users' association for the purpose of constructing or
10 maintaining works ~~without prior approval of the board.~~

11 **(2) A lease of project lands pursuant to [sections 1 through 11] is not subject to the approval of**
12 the board."

13
14 **Section 13.** Section 85-1-204, MCA, is amended to read:

15 **"85-1-204. Department powers over state waters water.** (1) The department, ~~with the approval~~
16 ~~of the board,~~ may sell, lease, and otherwise dispose of ~~all waters which may be~~ water impounded under
17 this chapter, ~~and the.~~ The water may be sold for the purpose of irrigation, development of power, watering
18 of stock, or ~~any other purpose~~ purposes. The department, ~~with the approval of the board,~~ may also lease
19 water under the state water leasing program established under the provisions of 85-2-141. To the extent
20 that it may be necessary to carry out this chapter and subject to a compliance with the other provisions
21 of this chapter, the department has full control of all the water of the state not under the exclusive control
22 of the United States and not vested in private ownership, and it shall take ~~such steps as may be necessary~~
23 the necessary actions to appropriate and conserve the ~~same~~ water for the use of the people. The authority
24 of the department conferred by this chapter extends and applies to rights to the natural flow of the ~~waters~~
25 water of this state ~~which that~~ it may acquire, ~~with the approval of the board,~~ by condemnation, purchase,
26 exchange, appropriation, or agreement.

27 (2) For the purpose of regulating the diversion of ~~these waters~~ water, the department may enter
28 upon the means and place of use of all appropriators for making surveys of respective rights and seasonal
29 needs.

30 (3) The department may take into consideration the decrees of the courts of this state having

1 jurisdiction ~~which~~ that purport to adjudicate the ~~waters~~ water of a stream or its tributaries, ~~and a.~~ A fair,
 2 reasonable, and equitable reconciliation ~~shall~~ must be made between the claimants asserting rights under
 3 different decrees and between decreed rights and asserted rights of appropriation not adjudicated by ~~any~~
 4 a court.

5 (4) The department, ~~at its discretion,~~ may hold hearings relating to the rights of respective
 6 claimants after first giving ~~such~~ the notice as it considers appropriate, ~~and~~ The department shall make
 7 findings of the date and quantity of appropriation and use of all claimants ~~which~~ that the department ~~will~~
 8 ~~recognize~~ recognizes and ~~observe~~ observes in diverting the ~~waters~~ water that the department
 9 owns. The department may ~~police~~ measure and distribute the water to the owner of the recognized
 10 appropriation ~~the waters due him upon request and under terms agreed upon~~ under agreed-upon terms.

11 (5) The department, when engaged in controlling and dividing the natural flow of a stream under
 12 the authority granted by this chapter, is exercising a police power of the state, and water commissioners
 13 appointed by any court may not deprive the department of any of the ~~waters~~ water owned or administered
 14 under agreement with respective owners. The owner of a prior right ~~contending~~ who contends that the
 15 department is not recognizing and respecting the appropriation may resort to a court for the purpose of
 16 determining whether or not the rights of the claimant have been invaded, and the department shall observe
 17 the terms of the final decree.

18 (6) When the department impounds or acquires the right of appropriation of the ~~waters~~ water of
 19 a stream it may divert or authorize the diversion at ~~any~~ a point on the stream or ~~any~~ a portion ~~thereof~~ of
 20 the stream when it is done without injury to a prior appropriator."

21

22 **Section 14.** Section 85-1-206, MCA, is amended to read:

23 **"85-1-206. Construction of works by department.** (1) ~~Subject to the approval of the board, the~~
 24 The department may construct works, with the cost of the construction to be paid wholly by means of or
 25 with the proceeds of revenue bonds ~~hereinafter authorized~~ or of a grant or loan to aid in financing the
 26 construction from the United States or any instrumentality or agency ~~thereof~~ of the United States and other
 27 funds provided for the construction. Before constructing a project, the department shall estimate the cost
 28 of the project, the cost of operation and maintenance, and the ~~revenues~~ revenue to be derived ~~therefrom~~
 29 from the operation of the project. A project may not be constructed unless, according to the estimates,
 30 the ~~revenues~~ revenue to be derived will be sufficient to pay the cost of operation and maintenance and the

1 principal and interest of loans or revenue bonds ~~which may be~~ issued for the cost of the project, ~~;~~
 2 ~~however, in~~ In connection with the issuance of revenue bonds, the failure of the department to make the
 3 estimates required by this section or to make them in proper form does not affect the validity or
 4 enforceability of ~~these~~ the bonds or of the trust indenture, resolution, or other security ~~therefor~~ for the
 5 bonds.

6 (2) Should the bid of the lowest responsible bidder on any capital improvement associated with
 7 public works exceed the department estimates of the cost of the improvements by more than 5%, the
 8 department shall obtain approval from the water ~~user~~ users' association, whenever an association is
 9 involved, before the bid is accepted, ~~;~~ ~~however, capital~~ Capital improvements of an emergency nature
 10 necessary to protect life or property or to supply immediate needs for water do not require ~~such~~ approval
 11 of the water users' association.

12 (3) A purpose of this chapter is to meet, so far as possible, a statewide need for the conservation
 13 and use of water through the construction and operation of projects ~~designed for these purposes~~. The
 14 projects to be ~~finally~~ constructed ~~shall~~ must qualify as parts of the statewide program and ~~shall~~ must be
 15 approved ~~by the board~~ upon the showing of ~~their~~ prospective ability to meet, through the sale of water or
 16 other services, the cost of operation and maintenance and the principal and interest of loans and revenue
 17 bonds issued to finance the construction. The failure ~~of the board~~ to determine the prospective ability of
 18 a project does not affect the validity or enforceability of the bonds or of the trust indenture, resolution, or
 19 other security ~~therefor~~ for the bonds."

20

21 **Section 15.** Section 85-1-209, MCA, is amended to read:

22 **"85-1-209. Acquisition of property by department.** (1) The department, ~~subject to the approval~~
 23 ~~of the board under 85-1-202,~~ may acquire by purchase or exchange upon terms and conditions and in a
 24 manner it considers proper and may acquire by condemnation, in accordance with laws applicable to the
 25 condemnation of property for public use, any land, rights, water rights, easements, franchises, and other
 26 property considered necessary for the construction, operation, and maintenance of works. Title to property
 27 purchased or condemned ~~shall~~ must be taken in the name of the department. The department is under no
 28 obligation to accept and pay for any property condemned under this chapter except from the funds provided
 29 by this chapter. In any proceedings to condemn, orders may be made by the court ~~having~~ that has
 30 jurisdiction of the suit, action, or proceeding as may be warranted by law and the facts.

1 (2) In a condemnation proceeding brought under the powers of eminent domain for the purpose
 2 of carrying out this chapter, all persons interested in the title of or holding liens upon the property sought
 3 to be acquired, as disclosed by the public records, ~~shall~~ must be made parties, and the court in the action
 4 shall partition and distribute the damages awarded, if any, among those persons as their rights appear. If
 5 there is controversy between them, the court may direct the amount of the damage awarded to be paid into
 6 court to abide the result of further appropriate proceedings either at law or in equity.

7 (3) ~~The taking~~ Taking possession of the property sought to be condemned may not be delayed by
 8 reason of any dispute between the rival claimants or the failure to join any of them as a party to the
 9 proceedings in condemnation.

10 (4) If water rights are acquired or exercised by the department in connection with two or more
 11 works or projects, the department by order shall apportion or allocate to each of the works or projects ~~such~~
 12 the part of these the water rights as it may determine that the department determines is necessary. Upon
 13 the adoption of the order, ~~these the~~ water rights ~~shall be~~ are considered a part of each of the works or
 14 projects to the extent that the water rights have been ~~so~~ apportioned or allocated ~~thereto respectively."~~

15

16 **Section 16.** Section 85-1-210, MCA, is amended to read:

17 **"85-1-210. Disposal of property by department.** In addition to the powers conferred upon the
 18 department to sell, lease, or otherwise dispose of ~~waters~~ water for the purpose of irrigation, development
 19 of power, watering of stock, or other purposes, the department, ~~with the approval of the board,~~ may sell,
 20 lease, or otherwise dispose of ~~waters~~ water from its waterworks systems for public, domestic, industrial,
 21 and other uses and for fire protection. The department, ~~with the approval of the board,~~ may sell or
 22 otherwise dispose of a water project, after the discharge of all of the bonds issued to finance the
 23 construction or acquisition ~~thereof~~ of the project, if any, and of all interest, ~~thereon~~ and costs and expenses
 24 incurred in connection with any action or proceeding by or on behalf of the holders of the bonds. ~~The~~
 25 Except for a water project for which no water purchase contracts are managed by the department and for
 26 which no money is collected by the department, the department shall make a determination of the market
 27 value of ~~the a~~ water project prior to its sale or other disposition. The department's determination of market
 28 value ~~shall~~ must consider all liens, encumbrances, and other limitations on the water project."

29

30 **Section 17.** Section 85-1-211, MCA, is amended to read:

1 **"85-1-211. Management of property -- water contracts.** (1) Subject to this chapter, the
 2 department may fix and establish the prices, rates, and charges at which the resources and facilities made
 3 available under this chapter may be sold and disposed of and enter into contracts and agreements and do
 4 those things that in its judgment are necessary, convenient, or expedient for the accomplishment of the
 5 purposes and objects of this chapter, under general rules and upon terms, limitations, and conditions as
 6 it prescribes.

7 (2) The department shall enter into the contracts and fix and establish the prices, rates, and
 8 charges ~~so as~~ to provide at all times funds that ~~will be~~ are sufficient to pay all costs of operation and
 9 maintenance of the works authorized by this chapter, together with necessary repairs to the works, and
 10 that will provide at all times sufficient funds to meet and pay the principal and interest of all bonds or loans
 11 as they severally become due and payable.

12 (3) This chapter does not authorize any change, alteration, or revision of ~~these~~ the rates, prices,
 13 or charges as established by a contract entered into under this chapter except as provided by the contract.

14 (4) A contract made by the department for the sale of water, use of water, water storage, or other
 15 service or for the sale of property or facilities must provide that, in the event of a failure or default in the
 16 payment of money specified in the contract to be paid to the department, the department may, upon notice
 17 as is prescribed in the contract, terminate the contract and all obligations under the contract. The act of
 18 the department in ceasing on default to furnish or deliver water, use of water, water storage, or other
 19 service under the contract does not deprive the department of or limit a remedy provided by the contract
 20 or by law for the recovery of money due or that may become due under the contract.

21 (5) ~~Subject to the approval of the board under 85-1-202, the~~ The department may sell, transfer to
 22 water ~~user~~ users' associations, abandon, lease or rent, or otherwise dispose of any rights-of-way,
 23 easements, properties, or interests ~~or lease or rent the same~~ or otherwise take and receive the income or
 24 profit and revenue ~~therefrom~~ from them without regard to other laws providing for the disposition of state
 25 property. Except for a water project for which no water management contracts are managed by the
 26 department and for which no money is collected by the department, Prior ~~prior~~ to the department's sale,
 27 transfer, or other disposition, a determination must be made by the department as to the market value of
 28 the rights-of-way, easements, properties, or interests to be sold, transferred, abandoned, or otherwise
 29 disposed of. The department's determination of market value must consider all liens, encumbrances, and
 30 other limitations on the project properties or interests.

1 (6) (a) The department shall attempt to dispose of its canal projects by June 30, 1995. The canal
2 projects to be disposed of include the:

- 3 (i) Columbus canal;
- 4 (ii) Delphia-Melstone canals;
- 5 (iii) Hysham pumping canals;
- 6 (iv) Lewistown ditch;
- 7 (v) Livingston ditch;
- 8 (vi) Florence canal;
- 9 (vii) Paradise canal;
- 10 (viii) Park Branch canal;
- 11 (ix) Sidney pumping canals;
- 12 (x) South Side canal;
- 13 (xi) Vigilante canal; and
- 14 (xii) West Bench canal.

15 (b) The department may dispose of a canal project by sale, transfer to a water users' association,
16 abandonment, or other legal conveyance. If there is an existing water users' association on the canal
17 project, the provisions of ~~85-6-109(5)~~ 85-6-109 must be complied with in the disposal of the canal project.
18 The department shall give preference to existing water users' associations operating and maintaining the
19 canal project.

20 (c) Upon the sale or transfer of a canal project, the department shall either cancel or write off from
21 the accounts receivable carried on the books of the department a sum not to exceed any previous 1-year
22 cost of operating and maintaining the canal project or make a payment not to exceed any previous 1-year
23 cost of operating and maintaining the canal project. For a canal project not disposed of by June 30, 1995,
24 the water users of the canal project are responsible for the department's administrative costs and the actual
25 costs of operation and maintenance of the canal project.

26 (7) An employee or agent of the department authorized by the director may enter upon any land
27 to carry out the purposes of this section, including but not limited to entry to make an inspection of the
28 canal project that the department considers necessary ~~of the canal project~~, entry to salvage or remove
29 project property, and entry to make physical alterations to canal project property. The department shall
30 give reasonable notice to the landowner of its intention to enter upon the land. The department is

1 responsible for actual damages done to property."

2

3 **Section 18.** Section 85-1-215, MCA, is amended to read:

4 "85-1-215. **Department duties -- records and operations.** The department shall keep ~~full and~~
 5 ~~complete accounts concerning all matters and things relating to the works and annually shall prepare~~
 6 ~~balance sheets and income and profit and loss statements~~ accounting records of each project and by July
 7 1 of each year prepare a financial statement showing the financial ~~condition~~ status of each project ~~and file~~
 8 ~~copies thereof with the secretary of state.~~ All books and papers pertaining to ~~all~~ matters provided for in
 9 this chapter shall at all reasonable times be open to the inspection of ~~any party~~ an interested party or ~~any~~
 10 citizen of the state. Except as otherwise provided in this chapter, the department has full charge and
 11 control of the construction, operation, and maintenance of the works and the collection of all rates,
 12 charges, and ~~revenues of whatsoever character therefrom~~ revenue from them. The department shall
 13 proceed immediately with the construction of the works ~~upon~~ as soon as funds ~~being~~ are made available
 14 ~~therefor~~ and shall ~~proceed to~~ complete the works ~~to completion~~ as rapidly as possible."

15

16 NEW SECTION. **Section 19. Severability.** If a part of [this act] is invalid, all valid parts that are
 17 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
 18 applications, the part remains in effect in all valid applications that are severable from the invalid
 19 applications.

20

21 NEW SECTION. **Section 20. Codification instruction.** [Sections 1 through 11] are intended to be
 22 codified as an integral part of Title 85, chapter 1, and the provisions of Title 85, chapter 1, apply to
 23 [sections 1 through 11].

24

25 NEW SECTION. **Section 21. Effective date.** [This act] is effective July 1, 1995.

26

-END-