

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

INTRODUCED BY

Senate BILL NO. 342
Brandon Smith

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE BASIN CLOSURE, WATER LEASING, AND TEMPORARY CHANGE STATUTES AS THEY APPLY TO THE UPPER CLARK FORK RIVER BASIN; ALTERING THE COMPOSITION OF THE UPPER CLARK FORK BASIN STEERING COMMITTEE; AMENDING SECTIONS 85-2-336 AND 85-2-338, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 85-2-336, MCA, is amended to read:

"**85-2-336. Basin closure -- ~~exception~~ exceptions.** (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section, the department may not process or grant an application for a permit to appropriate water within the Upper Clark Fork River basin.

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

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

(b) an application filed prior to January 1, 2000, for a permit to appropriate water to conduct response actions or remedial actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, or Title 75, chapter 10, part 7, at sites designated as of January 1, 1994. The total flow rates for all permits issued under this subsection (2)(b) may not exceed 10 cubic feet per second. A permit issued to conduct response actions or remedial actions may not be used for dilution and must be limited to a term not to exceed the necessary time to complete the response or remedial action, and the permit may not be transferred to any person for any purpose other than the designated response or remedial action;

(c) an application for a permit to appropriate water for stock use;

(d) an application to store water; ~~or~~

(e) an application for power generation at existing hydroelectric dams. The department may not approve a permit for power generation if approval results in additional consumption of water.

(f) an application for a permit that contains an augmentation plan for providing sufficient augmentation water in amount, time, and location to replace depletions to senior water rights.

1 (3) Applications for water reservations in the Upper Clark Fork River basin filed pursuant to
 2 85-2-316 and pending as of May 1, 1991, have a priority date of May 1, 1991. The filing of a reservation
 3 application does not provide standing to object under 85-2-402.

4 (4) The department may not process or approve applications for reservations of water in the Upper
 5 Clark Fork River basin filed pursuant to 85-2-316."

6
 7 **Section 2.** Section 85-2-338, MCA, is amended to read:

8 **"85-2-338. Upper Clark Fork River basin steering committee -- membership and duties --**
 9 **comprehensive management plan.** (1) There is an Upper Clark Fork River basin steering committee. The
 10 steering committee has 22 members, who must be appointed as follows:

11 (a) Each of the six conservation districts in the basin may appoint a member.

12 (b) Each of the six county commissions in the basin may appoint a member.

13 (c) The department director shall appoint the ~~members of the committee, selecting them~~ remaining
 14 ten committee members and shall ensure that committee membership includes a balance of affected basin
 15 interests and is in conformance with subsection (2).

16 (2) Steering committee members must be selected on the basis of their knowledge of water use,
 17 water management, fish, wildlife, recreation, water quality, and water conservation. Representation on the
 18 committee must include but is not limited to representatives from affected:

19 (a) ~~agricultural organizations~~ agriculture;

20 (b) conservation districts;

21 (c) departments of state government;

22 (d) environmental organizations;

23 (e) industries;

24 (f) local governments;

25 (g) reservation applicants;

26 (h) utilities; and

27 (i) ~~water user organizations~~ users not otherwise represented.

28 (3) Except as provided in subsection (4), steering committee members shall serve 4-year terms and
 29 may serve more than one term.

30 (4) Initial term lengths must be staggered in conformance with the following:

- 1 (a) conservation district appointees shall initially serve for 4 years;
 2 (b) county commissioner appointees shall initially serve for 2 years; and
 3 (c) as determined by the department, half of the department appointees shall initially serve for 2
 4 years and the remainder shall initially serve for 4 years.

5 ~~(2)(5)~~ The steering committee, consistent with the Upper Clark Fork River basin comprehensive
 6 management plan, shall:

7 (a) review the Upper Clark Fork River basin closure and exceptions as provided in 85-2-336 no less
 8 than every 5 years after April 14, 1995, and make recommendations to the legislature regarding necessary
 9 changes;

10 ~~(b) make recommendations to the 1997 legislature concerning representation, terms, and the~~
 11 ~~method of appointing members to the steering committee;~~

12 ~~(c)(b)~~ prepare and submit a report evaluating the Upper Clark Fork River basin instream flow pilot
 13 program as provided in 85-2-439;

14 ~~(d)(c)~~ prepare and submit a report concerning the relationship between surface water and ground
 15 water and the cumulative impacts of ground water withdrawals in each subbasin;

16 ~~(e)(d)~~ provide a forum for all interests to communicate about water issues;

17 ~~(f)(e)~~ provide education about water law and water management issues;

18 ~~(g)(f)~~ identify short-term and long-term water management issues and problems and identify
 19 alternatives for resolving them;

20 ~~(h)(g)~~ identify the potential beneficiaries of and a funding mechanism for new and expanded water
 21 storage sites;

22 ~~(i)(h)~~ assist in facilitating the resolution of water-related disputes;

23 ~~(j)(i)~~ provide coordination with other basin management and planning efforts;

24 ~~(k)(j)~~ advise government agencies about water management and permitting activities;

25 ~~(l)(k)~~ consult with local governments within the Upper Clark Fork River basin; and

26 ~~(m)(l)~~ report periodically to the legislature."

27

28 **NEW SECTION. Section 3. Upper Clark Fork River basin change and lease validity -- limitations.**

29 All temporary changes and leases authorized under 85-2-439 that are entered into prior to June 30, 2005,
 30 remain valid until the expiration date of the temporary change and lease. A temporary change or lease

1 authorized under 85-2-439 may not be renewed or otherwise extended after June 30, 2005.

2

3 NEW SECTION. **Section 4. Codification instruction.** [Section 3] is intended to be codified as an
4 integral part of Title 85, chapter 2, part 4, and the provisions of Title 85, chapter 2, part 4, apply to
5 [section 3].

6

7 NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval.

8

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0342, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

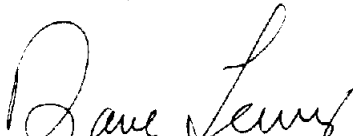
An act revising the basin closure, water leasing, and temporary changes statutes as they apply to the Upper Clark Fork River basin; altering the composition of the Upper Clark Fork Basin Steering Committee.

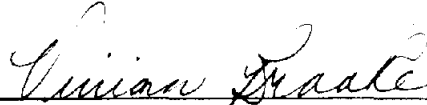
ASSUMPTIONS:

1. This legislation will not result in a significant increase in workload or costs associated with processing applications for new water use permits.
2. Although this creates an opportunity to acquire new water rights for surface or groundwater using augmentation plans, the significant expense of developing and implementing such plans will greatly limit the number of permit applications.
3. This bill does not affect the ability of parties to obtain water rights through other existing methods such as purchasing or changing existing water rights, groundwater development, or construction of new or enlarged storage projects.
4. The demand for new water developments will not increase as a result of the bill.
5. The Upper Clark Fork basin surface water closure remains unchanged.
6. The department currently appoints the Upper Clark Fork River Basin Steering Committee. This legislation would not significantly affect existing procedures.
7. Clarification regarding in stream flow lease duration and renewals will have no significant impact on the number or complexity of applications for Change of Appropriation Water Rights.

FISCAL IMPACT:

No fiscal impact anticipated.

 2-15-97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 2/15/97
VIVIAN BROOKE, PRIMARY SPONSOR DATE

Fiscal Note for SB0342, as introduced

SB342

SENATE BILL NO. 342

INTRODUCED BY BROOKE, BECK, SMITH, MOOD

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE BASIN CLOSURE, WATER LEASING, AND TEMPORARY CHANGE STATUTES AS THEY APPLY TO THE UPPER CLARK FORK RIVER BASIN; ALTERING THE COMPOSITION OF THE UPPER CLARK FORK BASIN STEERING COMMITTEE; AMENDING SECTIONS ~~85-2-336~~ 85-2-337 AND 85-2-338, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

~~Section 1. Section 85-2-336, MCA, is amended to read:~~

~~"85-2-336. Basin closure exception exceptions. (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section, the department may not process or grant an application for a permit to appropriate water within the Upper Clark Fork River basin.~~

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

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

~~(b) an application filed prior to January 1, 2000, for a permit to appropriate water to conduct response actions or remedial actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, or Title 75, chapter 10, part 7, at sites designated as of January 1, 1994. The total flow rates for all permits issued under this subsection (2)(b) may not exceed 10 cubic feet per second. A permit issued to conduct response actions or remedial actions may not be used for dilution and must be limited to a term not to exceed the necessary time to complete the response or remedial action, and the permit may not be transferred to any person for any purpose other than the designated response or remedial action;~~

~~(c) an application for a permit to appropriate water for stock use;~~

~~(d) an application to store water; or~~

~~(e) an application for power generation at existing hydroelectric dams. The department may not approve a permit for power generation if approval results in additional consumption of water.~~

~~(f) an application for a permit that contains an augmentation plan for providing sufficient augmentation water in amount, time, and location to replace depletions to senior water rights.~~

1 ~~(3) Applications for water reservations in the Upper Clark Fork River basin filed pursuant to~~
 2 ~~85-2-316 and pending as of May 1, 1991, have a priority date of May 1, 1991. The filing of a reservation~~
 3 ~~application does not provide standing to object under 85-2-402.~~

4 ~~(4) The department may not process or approve applications for reservations of water in the Upper~~
 5 ~~Clark Fork River basin filed pursuant to 85-2-316."~~

6

7

SECTION 1. SECTION 85-2-337, MCA, IS AMENDED TO READ:

8

"85-2-337. **Ground water permit applications -- report required.** (1) During the period of basin
 9 closure provided in 85-2-336(1), an applicant for a ground water permit in the Upper Clark Fork River basin
 10 shall submit a report prepared by a professional engineer or hydrologist ~~verifying that~~ addressing the
 11 hydrologic connection between the source of the ground water ~~is not a part of or substantially or directly~~
 12 ~~connected to~~ and surface water. If the applicant fails to submit the report required in this section, the
 13 application is considered defective and must be processed pursuant to 85-2-302.

14

(2) Except as provided in subsection (3), the department may not issue a permit to appropriate
 15 ground water in the Upper Clark Fork River basin unless the applicant proves by a preponderance of
 16 evidence, in addition to the criteria of 85-2-311, the department shall find, based on substantial credible
 17 evidence, that the source of the ground water is not a part of or substantially or directly connected to
 18 surface water.

19

(3) The department may issue a permit to appropriate ground water if the application includes an
 20 augmentation plan and if the applicant proves by a preponderance of evidence, in addition to the criteria
 21 of 85-2-311, that the augmentation plan provides sufficient augmentation water in amount, time, and
 22 location to replace depletions to senior water rights."

23

24

Section 2. Section 85-2-338, MCA, is amended to read:

25

"85-2-338. **Upper Clark Fork River basin steering committee -- membership and duties --**
 26 **comprehensive management plan.** (1) There is an Upper Clark Fork River basin steering committee. The
 27 steering committee has 22 members, who must be appointed as follows:

28

(a) Each of the six conservation districts in the basin may appoint a member.

29

(b) Each of the six county commissions in the basin may appoint a member.

30

(c) The department director shall appoint the ~~members of the committee, selecting them~~ remaining

1 ~~ten~~ 10 committee members AND ANY ADDITIONAL COMMITTEE MEMBERS NOT APPOINTED UNDER
 2 SUBSECTIONS (1)(A) AND (1)(B) and shall ensure that committee membership includes a balance of
 3 affected basin interests and is in conformance with subsection (2).

4 (2) Steering committee members must be selected on the basis of their knowledge of water use,
 5 water management, fish, wildlife, recreation, water quality, and water conservation. Representation on the
 6 committee must include but is not limited to representatives from affected:

- 7 (a) ~~agricultural organizations~~ agriculture;
- 8 (b) conservation districts;
- 9 (c) departments of state government;
- 10 (d) environmental organizations;
- 11 (e) industries;
- 12 (f) local governments;
- 13 (g) reservation applicants;
- 14 (h) utilities; and
- 15 (i) ~~water user organizations~~ users not otherwise represented.

16 (3) Except as provided in subsection (4), steering committee members shall serve 4-year terms and
 17 may serve more than one term.

18 (4) Initial term lengths must be staggered in conformance with the following:

19 (a) conservation district appointees shall initially serve for 4 years;

20 (b) county commissioner appointees shall initially serve for 2 years; and

21 (c) as determined by the department, half of the department appointees shall initially serve for 2
 22 years and the remainder shall initially serve for 4 years.

23 ~~(2)(5)~~ (5) The steering committee, consistent with the Upper Clark Fork River basin comprehensive
 24 management plan, shall:

25 (a) review the Upper Clark Fork River basin closure and exceptions as provided in 85-2-336 no less
 26 than every 5 years after April 14, 1995, and make recommendations to the legislature regarding necessary
 27 changes;

28 ~~(b) make recommendations to the 1997 legislature concerning representation, terms, and the~~
 29 ~~method of appointing members to the steering committee;~~

30 ~~(c)~~ (b) prepare and submit a report evaluating the Upper Clark Fork River basin instream flow pilot

- 1 program as provided in 85-2-439;
- 2 ~~(d)~~(c) prepare and submit a report concerning the relationship between surface water and ground
- 3 water and the cumulative impacts of ground water withdrawals in each subbasin;
- 4 ~~(e)~~(d) provide a forum for all interests to communicate about water issues;
- 5 ~~(f)~~(e) provide education about water law and water management issues;
- 6 ~~(g)~~(f) identify short-term and long-term water management issues and problems and identify
- 7 alternatives for resolving them;
- 8 ~~(h)~~(g) identify the potential beneficiaries of and a funding mechanism for new and expanded water
- 9 storage sites;
- 10 ~~(i)~~(h) assist in facilitating the resolution of water-related disputes;
- 11 ~~(j)~~(i) provide coordination with other basin management and planning efforts;
- 12 ~~(k)~~(j) advise government agencies about water management and permitting activities;
- 13 ~~(l)~~(k) consult with local governments within the Upper Clark Fork River basin; and
- 14 ~~(m)~~(l) report periodically to the legislature."

15

16 **NEW SECTION. Section 3. Upper Clark Fork River basin change and lease validity -- limitations.**

17 All temporary changes and leases authorized under 85-2-439 that are entered into prior to June 30, 2005,

18 remain valid until the expiration date of the temporary change and lease. A temporary change or lease

19 authorized under 85-2-439 may not be renewed or otherwise extended after June 30, 2005.

20

21 **NEW SECTION. Section 4. Codification instruction.** [Section 3] is intended to be codified as an

22 integral part of Title 85, chapter 2, part 4, and the provisions of Title 85, chapter 2, part 4, apply to

23 [section 3].

24

25 **NEW SECTION. Section 5. Effective date.** [This act] is effective on passage and approval.

26

-END-

SENATE BILL NO. 342

INTRODUCED BY BROOKE, BECK, SMITH, MOOD

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE BASIN CLOSURE, WATER LEASING, AND TEMPORARY CHANGE STATUTES AS THEY APPLY TO THE UPPER CLARK FORK RIVER BASIN; ALTERING THE COMPOSITION OF THE UPPER CLARK FORK BASIN STEERING COMMITTEE; AMENDING SECTIONS ~~85-2-336~~ 85-2-337 AND 85-2-338, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

~~Section 1. Section 85-2-336, MCA, is amended to read:~~

~~"85-2-336. Basin closure exception exceptions. (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section, the department may not process or grant an application for a permit to appropriate water within the Upper Clark Fork River basin.~~

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

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

~~(b) an application filed prior to January 1, 2000, for a permit to appropriate water to conduct response actions or remedial actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, or Title 75, chapter 10, part 7, at sites designated as of January 1, 1994. The total flow rates for all permits issued under this subsection (2)(b) may not exceed 10 cubic feet per second. A permit issued to conduct response actions or remedial actions may not be used for dilution and must be limited to a term not to exceed the necessary time to complete the response or remedial action, and the permit may not be transferred to any person for any purpose other than the designated response or remedial action;~~

~~(c) an application for a permit to appropriate water for stock use;~~

~~(d) an application to store water; or~~

~~(e) an application for power generation at existing hydroelectric dams. The department may not approve a permit for power generation if approval results in additional consumption of water.~~

~~(f) an application for a permit that contains an augmentation plan for providing sufficient augmentation water in amount, time, and location to replace depletions to senior water rights.~~

1 ~~(3) Applications for water reservations in the Upper Clark Fork River basin filed pursuant to~~
 2 ~~85-2-316 and pending as of May 1, 1991, have a priority date of May 1, 1991. The filing of a reservation~~
 3 ~~application does not provide standing to object under 85-2-402.~~

4 ~~(4) The department may not process or approve applications for reservations of water in the Upper~~
 5 ~~Clark Fork River basin filed pursuant to 85-2-316."~~

6
 7 **SECTION 1. SECTION 85-2-337, MCA, IS AMENDED TO READ:**

8 **"85-2-337. Ground water permit applications -- report required.** (1) During the period of basin
 9 closure provided in 85-2-336(1), an applicant for a ground water permit in the Upper Clark Fork River basin
 10 shall submit a report prepared by a professional engineer or hydrologist ~~verifying that~~ addressing the
 11 hydrologic connection between the source of the ground water ~~is not a part of or substantially or directly~~
 12 ~~connected to~~ and surface water. If the applicant fails to submit the report required in this section, the
 13 application is considered defective and must be processed pursuant to 85-2-302.

14 (2) Except as provided in subsection (3), the department may not issue a permit to appropriate
 15 ground water in the Upper Clark Fork River basin unless the applicant proves by a preponderance of
 16 evidence, in addition to the criteria of 85-2-311, the department shall find, based on substantial credible
 17 evidence, that the source of the ground water is not a part of or substantially or directly connected to
 18 surface water.

19 (3) The department may issue a permit to appropriate ground water if the application includes an
 20 augmentation plan and if the applicant proves by a preponderance of evidence, in addition to the criteria
 21 of 85-2-311, that the augmentation plan provides sufficient augmentation water in amount, time, and
 22 location to replace depletions to senior water rights."

23
 24 **Section 2. Section 85-2-338, MCA, is amended to read:**

25 **"85-2-338. Upper Clark Fork River basin steering committee -- membership and duties --**
 26 **comprehensive management plan.** (1) There is an Upper Clark Fork River basin steering committee. The
 27 steering committee has 22 members, who must be appointed as follows:

28 (a) Each of the six conservation districts in the basin may appoint a member.

29 (b) Each of the six county commissions in the basin may appoint a member.

30 (c) The department director shall appoint the members of the committee, selecting them remaining

1 ~~ten~~ 10 committee members AND ANY ADDITIONAL COMMITTEE MEMBERS NOT APPOINTED UNDER
 2 SUBSECTIONS (1)(A) AND (1)(B) and shall ensure that committee membership includes a balance of
 3 affected basin interests and is in conformance with subsection (2).

4 (2) Steering committee members must be selected on the basis of their knowledge of water use,
 5 water management, fish, wildlife, recreation, water quality, and water conservation. Representation on the
 6 committee must include but is not limited to representatives from affected:

- 7 (a) ~~agricultural organizations~~ agriculture;
 8 (b) conservation districts;
 9 (c) departments of state government;
 10 (d) environmental organizations;
 11 (e) industries;
 12 (f) local governments;
 13 (g) reservation applicants;
 14 (h) utilities; and
 15 (i) ~~water user organizations~~ users not otherwise represented.

16 (3) Except as provided in subsection (4), steering committee members shall serve 4-year terms and
 17 may serve more than one term.

18 (4) Initial term lengths must be staggered in conformance with the following:

19 (a) conservation district appointees shall initially serve for 4 years;

20 (b) county commissioner appointees shall initially serve for 2 years; and

21 (c) as determined by the department, half of the department appointees shall initially serve for 2
 22 years and the remainder shall initially serve for 4 years.

23 ~~(2)(5)~~ (5) The steering committee, consistent with the Upper Clark Fork River basin comprehensive
 24 management plan, shall:

25 (a) review the Upper Clark Fork River basin closure and exceptions as provided in 85-2-336 no less
 26 than every 5 years after April 14, 1995, and make recommendations to the legislature regarding necessary
 27 changes;

28 ~~(b) make recommendations to the 1997 legislature concerning representation, terms, and the~~
 29 ~~method of appointing members to the steering committee;~~

30 ~~(a)~~ (b) prepare and submit a report evaluating the Upper Clark Fork River basin instream flow pilot

- 1 program as provided in 85-2-439;
- 2 ~~(c)~~ prepare and submit a report concerning the relationship between surface water and ground
- 3 water and the cumulative impacts of ground water withdrawals in each subbasin;
- 4 ~~(d)~~ provide a forum for all interests to communicate about water issues;
- 5 ~~(e)~~ provide education about water law and water management issues;
- 6 ~~(f)~~ identify short-term and long-term water management issues and problems and identify
- 7 alternatives for resolving them;
- 8 ~~(g)~~ identify the potential beneficiaries of and a funding mechanism for new and expanded water
- 9 storage sites;
- 10 ~~(h)~~ assist in facilitating the resolution of water-related disputes;
- 11 ~~(i)~~ provide coordination with other basin management and planning efforts;
- 12 ~~(j)~~ advise government agencies about water management and permitting activities;
- 13 ~~(k)~~ consult with local governments within the Upper Clark Fork River basin; and
- 14 ~~(l)~~ report periodically to the legislature."

15

16 **NEW SECTION. Section 3. Upper Clark Fork River basin change and lease validity -- limitations.**

17 All temporary changes and leases authorized under 85-2-439 that are entered into prior to June 30, 2005,

18 remain valid until the expiration date of the temporary change and lease. A temporary change or lease

19 authorized under 85-2-439 may not be renewed or otherwise extended after June 30, 2005.

20

21 **NEW SECTION. Section 4. Codification instruction.** [Section 3] is intended to be codified as an

22 integral part of Title 85, chapter 2, part 4, and the provisions of Title 85, chapter 2, part 4, apply to

23 [section 3].

24

25 **NEW SECTION. Section 5. Effective date.** [This act] is effective on passage and approval.

26 -END-

SENATE BILL NO. 342

INTRODUCED BY BROOKE, BECK, SMITH, MOOD

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE BASIN CLOSURE, WATER LEASING, AND TEMPORARY CHANGE STATUTES AS THEY APPLY TO THE UPPER CLARK FORK RIVER BASIN; ALTERING THE COMPOSITION OF THE UPPER CLARK FORK BASIN STEERING COMMITTEE; AMENDING SECTIONS ~~85-2-336~~ 85-2-337 AND, ~~85-2-338~~, AND 85-2-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

~~Section 1. Section 85-2-336, MCA, is amended to read:~~

~~"85-2-336. Basin closure -- exception exceptions. (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section, the department may not process or grant an application for a permit to appropriate water within the Upper Clark Fork River basin.~~

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

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

~~(b) an application filed prior to January 1, 2000, for a permit to appropriate water to conduct response actions or remedial actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, or Title 75, chapter 10, part 7, at sites designated as of January 1, 1994. The total flow rates for all permits issued under this subsection (2)(b) may not exceed 10 cubic feet per second. A permit issued to conduct response actions or remedial actions may not be used for dilution and must be limited to a term not to exceed the necessary time to complete the response or remedial action, and the permit may not be transferred to any person for any purpose other than the designated response or remedial action;~~

~~(c) an application for a permit to appropriate water for stock use;~~

~~(d) an application to store water; or~~

~~(e) an application for power generation at existing hydroelectric dams. The department may not approve a permit for power generation if approval results in additional consumption of water.~~

~~(f) an application for a permit that contains an augmentation plan for providing sufficient~~

1 ~~augmentation water in amount, time, and location to replace depletions to senior water rights.~~

2 ~~(3) Applications for water reservations in the Upper Clark Fork River basin filed pursuant to~~
 3 ~~85-2-316 and pending as of May 1, 1991, have a priority date of May 1, 1991. The filing of a reservation~~
 4 ~~application does not provide standing to object under 85-2-402.~~

5 ~~(4) The department may not process or approve applications for reservations of water in the Upper~~
 6 ~~Clark Fork River basin filed pursuant to 85-2-316."~~

7
 8 **SECTION 1. SECTION 85-2-337, MCA, IS AMENDED TO READ:**

9 **"85-2-337. Ground water permit applications -- report required.** (1) During the period of basin
 10 closure provided in 85-2-336(1), an applicant for a ground water permit in the Upper Clark Fork River basin
 11 shall submit a report prepared by a professional engineer or hydrologist ~~verifying that~~ addressing the
 12 hydrologic connection between the source of the ground water ~~is not a part of or substantially or directly~~
 13 ~~connected to~~ and surface water. If the applicant fails to submit the report required in this section, the
 14 application is considered defective and must be processed pursuant to 85-2-302.

15 (2) Except as provided in subsection (3), the department may not issue a permit to appropriate
 16 ground water in the Upper Clark Fork River basin unless the applicant proves by a preponderance of
 17 evidence, in addition to the criteria of 85-2-311, the department shall find, based on substantial credible
 18 evidence, that the source of the ground water is not a part of or substantially or directly connected to
 19 surface water.

20 (3) The department may issue a permit to appropriate ground water if the application includes an
 21 augmentation plan and if the applicant proves by a preponderance of evidence, in addition to the criteria
 22 of 85-2-311, that the augmentation plan provides sufficient augmentation water in amount, time, and
 23 location to replace depletions to senior water rights."

24
 25 **Section 2. Section 85-2-338, MCA, is amended to read:**

26 **"85-2-338. Upper Clark Fork River basin steering committee -- membership and duties --**
 27 **comprehensive management plan.** (1) There is an Upper Clark Fork River basin steering committee. The
 28 steering committee has 22 members, who must be appointed as follows:

29 (a) Each of the six conservation districts in the basin may appoint a member.

30 (b) Each of the six county commissions in the basin may appoint a member.

1 (c) ~~The department director shall appoint the members of the committee, selecting them~~ remaining
 2 ~~ten~~ 10 committee members AND ANY ADDITIONAL COMMITTEE MEMBERS NOT APPOINTED UNDER
 3 SUBSECTIONS (1)(A) AND (1)(B) and shall ensure that committee membership includes a balance of
 4 affected basin interests and is in conformance with subsection (2).

5 (2) Steering committee members must be selected on the basis of their knowledge of water use,
 6 water management, fish, wildlife, recreation, water quality, and water conservation. Representation on the
 7 committee must include but is not limited to representatives from affected:

- 8 (a) ~~agricultural organizations~~ agriculture;
 9 (b) conservation districts;
 10 (c) departments of state government;
 11 (d) environmental organizations;
 12 (e) industries;
 13 (f) local governments;
 14 (g) reservation applicants;
 15 (h) utilities; and
 16 (i) ~~water user organizations~~ users not otherwise represented.

17 (3) Except as provided in subsection (4), steering committee members shall serve 4-year terms and
 18 may serve more than one term.

19 (4) Initial term lengths must be staggered in conformance with the following:

- 20 (a) conservation district appointees shall initially serve for 4 years;
 21 (b) county commissioner appointees shall initially serve for 2 years; and
 22 (c) as determined by the department, half of the department appointees shall initially serve for 2
 23 years and the remainder shall initially serve for 4 years.

24 ~~(2)(5)~~ (5) The steering committee, consistent with the Upper Clark Fork River basin comprehensive
 25 management plan, shall:

26 (a) review the Upper Clark Fork River basin closure and exceptions as provided in 85-2-336 no less
 27 than every 5 years after April 14, 1995, and make recommendations to the legislature regarding necessary
 28 changes;

29 ~~(b) make recommendations to the 1997 legislature concerning representation, terms, and the~~
 30 ~~method of appointing members to the steering committee;~~

- 1 ~~(e)~~(b) prepare and submit a report evaluating the Upper Clark Fork River basin instream flow pilot
2 program as provided in 85-2-439;
- 3 ~~(d)~~(c) prepare and submit a report concerning the relationship between surface water and ground
4 water and the cumulative impacts of ground water withdrawals in each subbasin;
- 5 ~~(e)~~(d) provide a forum for all interests to communicate about water issues;
- 6 ~~(f)~~(e) provide education about water law and water management issues;
- 7 ~~(g)~~(f) identify short-term and long-term water management issues and problems and identify
8 alternatives for resolving them;
- 9 ~~(h)~~(g) identify the potential beneficiaries of and a funding mechanism for new and expanded water
10 storage sites;
- 11 ~~(i)~~(h) assist in facilitating the resolution of water-related disputes;
- 12 ~~(j)~~(i) provide coordination with other basin management and planning efforts;
- 13 ~~(k)~~(j) advise government agencies about water management and permitting activities;
- 14 ~~(l)~~(k) consult with local governments within the Upper Clark Fork River basin; and
- 15 ~~(m)~~(l) report periodically to the legislature."

16

17 **SECTION 3. SECTION 85-2-402, MCA, IS AMENDED TO READ:**

18 **"85-2-402. (Temporary) Changes in appropriation rights. (1) An appropriator may not make a**
19 **change in an appropriation right except, as permitted under this section, by applying for and receiving the**
20 **approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and**
21 **complete application.**

22 (2) Except as provided in subsections (4) through (6), the department shall approve a change in
23 appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are
24 met:

25 (a) The proposed use will not adversely affect the water rights of other persons or other planned
26 uses or developments for which a permit has been issued or for which water has been reserved.

27 (b) Except for a lease authorization pursuant to 85-2-436, a temporary change authorization for
28 instream use to benefit the fishery resource pursuant to 85-2-408, or water use pursuant to 85-2-439 when
29 authorization does not require appropriation works, the proposed means of diversion, construction, and
30 operation of the appropriation works are adequate.

1 (c) The proposed use of water is a beneficial use.

2 (d) Except for a lease authorization pursuant to 85-2-436 or a temporary change authorization
3 pursuant to 85-2-408 or 85-2-439 for instream flow to benefit the fishery resource, the applicant has a
4 possessory interest, or the written consent of the person with the possessory interest, in the property
5 where the water is to be put to beneficial use.

6 (e) If the change in appropriation right involves salvaged water, the proposed water-saving methods
7 will salvage at least the amount of water asserted by the applicant.

8 (f) The water quality of an appropriator will not be adversely affected.

9 (g) The ability of a discharge permit holder to satisfy effluent limitations of a permit issued in
10 accordance with Title 75, chapter 5, part 4, will not be adversely affected.

11 (3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met
12 only if a valid objection is filed. A valid objection must contain substantial credible information establishing
13 to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not
14 be met.

15 (4) The department may not approve a change in purpose of use or place of use of an appropriation
16 of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the
17 appropriator proves by a preponderance of evidence that:

18 (a) the criteria in subsection (2) are met; and

19 (b) the proposed change is a reasonable use. A finding of reasonable use must be based on a
20 consideration of:

21 (i) the existing demands on the state water supply, as well as projected demands for water for
22 future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows
23 for the protection of existing water rights and aquatic life;

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

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

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

28 (v) the effects on private property rights by any creation of or contribution to saline seep; and

29 (vi) the probable significant adverse environmental impacts of the proposed use of water as
30 determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

1 (5) The department may not approve a change in purpose of use or place of use for a diversion that
2 results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being
3 consumed unless:

4 (a) the applicant proves by clear and convincing evidence and the department finds that the criteria
5 in subsections (2) and (4) are met; and

6 (b) the department then petitions the legislature and the legislature affirms the decision of the
7 department after one or more public hearings.

8 (6) The state of Montana has long recognized the importance of conserving its public waters and
9 the necessity to maintain adequate water supplies for the state's water requirements, including
10 requirements for reserved water rights held by the United States for federal reserved lands and in trust for
11 the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that,
12 under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict
13 with the public welfare of its citizens or the conservation of its waters, the following criteria must be met
14 before out-of-state use may occur:

15 (a) The department and, if applicable, the legislature may not approve a change in appropriation
16 right for the withdrawal and transportation of appropriated water for use outside the state unless the
17 appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one
18 or more public hearings that:

19 (i) depending on the volume of water diverted or consumed, the applicable criteria and procedures
20 of subsection (2) or (4) are met;

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

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

24 (b) In determining whether the appropriator has proved by clear and convincing evidence that the
25 requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the
26 legislature shall consider the following factors:

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

28 (ii) whether the water that is the subject of the proposed change in appropriation might feasibly
29 be transported to alleviate water shortages within the state of Montana;

30 (iii) the supply and sources of water available to the applicant in the state where the applicant

1 intends to use the water; and

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

4 (c) When applying for a change in appropriation right to withdraw and transport water for use
5 outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing
6 the appropriation and use of water.

7 (7) For any application for a change in appropriation right involving 4,000 or more acre-feet of
8 water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the
9 proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with
10 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice and
11 may hold one or more hearings upon any other proposed change if it determines that a change might
12 adversely affect the rights of other persons.

13 (8) The department or the legislature, if applicable, may approve a change subject to terms,
14 conditions, restrictions, and limitations as it considers necessary to satisfy the criteria of this section,
15 including limitations on the time for completion of the change. The department may extend time limits
16 specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

17 (9) Upon actual application of water to the proposed beneficial use within the time allowed, the
18 appropriator shall notify the department that the appropriation has been completed. The notification must
19 contain a certified statement by a person with experience in the design, construction, or operation of
20 appropriation works describing how the appropriation was completed.

21 (10) If a change is not completed as approved by the department or legislature or if the terms,
22 conditions, restrictions, and limitations of the change approval are not complied with, the department may,
23 after notice and opportunity for hearing, require the appropriator to show cause why the change approval
24 should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may
25 modify or revoke the change approval.

26 (11) The original of a change approval issued by the department must be sent to the applicant, and
27 a duplicate must be kept in the office of the department in Helena.

28 (12) A person holding an issued permit or change approval that has not been perfected may change
29 the place of diversion, place of use, purpose of use, or place of storage by filing an application for change
30 pursuant to this section.

1 (13) A change in appropriation right contrary to the provisions of this section is invalid. An officer,
2 agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an
3 unauthorized change in appropriation right. A person or corporation may not, directly or indirectly,
4 personally or through an agent, officer, or employee, attempt to change an appropriation right except in
5 accordance with this section.

6 (14) The department may adopt rules to implement the provisions of this section. (Terminates June
7 30, 1999--sec. 4, Ch. 740, L. 1991.)

8 **85-2-402. (Effective July 1, 1999) Changes in appropriation rights.** (1) An appropriator may not
9 make a change in an appropriation right except, as permitted under this section, by applying for and
10 receiving the approval of the department or, if applicable, of the legislature. An applicant shall submit a
11 correct and complete application.

12 (2) Except as provided in subsections (4) through (6), the department shall approve a change in
13 appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are
14 met:

15 (a) The proposed use will not adversely affect the water rights of other persons or other planned
16 uses or developments for which a permit has been issued or for which water has been reserved.

17 (b) Except for a temporary change authorization pursuant to 85-2-408 or for water use pursuant
18 to 85-2-439 that does not require appropriation works, the proposed means of diversion, construction, and
19 operation of the appropriation works are adequate.

20 (c) The proposed use of water is a beneficial use.

21 (d) Except for a temporary change authorization pursuant to 85-2-408 or 85-2-439 for instream
22 flow to benefit the fishery resource, the applicant has a possessory interest, or the written consent of the
23 person with the possessory interest, in the property where the water is to be put to beneficial use.

24 (e) If the change in appropriation right involves salvaged water, the proposed water-saving methods
25 will salvage at least the amount of water asserted by the applicant.

26 (f) The water quality of an appropriator will not be adversely affected.

27 (g) The ability of a discharge permitholder to satisfy effluent limitations of a permit issued in
28 accordance with Title 75, chapter 5, part 4, will not be adversely affected.

29 (3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met
30 only if a valid objection is filed. A valid objection must contain substantial credible information establishing

1 to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not
2 be met.

3 (4) The department may not approve a change in purpose of use or place of use of an appropriation
4 of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the
5 appropriator proves by a preponderance of evidence that:

6 (a) the criteria in subsection (2) are met; and

7 (b) the proposed change is a reasonable use. A finding of reasonable use must be based on a
8 consideration of:

9 (i) the existing demands on the state water supply, as well as projected demands for water for
10 future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows
11 for the protection of existing water rights and aquatic life;

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

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

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

16 (v) the effects on private property rights by any creation of or contribution to saline seep; and

17 (vi) the probable significant adverse environmental impacts of the proposed use of water as
18 determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

19 (5) The department may not approve a change in purpose of use or place of use for a diversion that
20 results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being
21 consumed unless:

22 (a) the applicant proves by clear and convincing evidence and the department finds that the criteria
23 in subsections (2) and (4) are met; and

24 (b) the department then petitions the legislature and the legislature affirms the decision of the
25 department after one or more public hearings.

26 (6) The state of Montana has long recognized the importance of conserving its public waters and
27 the necessity to maintain adequate water supplies for the state's water requirements, including
28 requirements for reserved water rights held by the United States for federal reserved lands and in trust for
29 the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that,
30 under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict

1 with the public welfare of its citizens or the conservation of its waters, the following criteria must be met
2 before out-of-state use may occur:

3 (a) The department and, if applicable, the legislature may not approve a change in appropriation
4 right for the withdrawal and transportation of appropriated water for use outside the state unless the
5 appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one
6 or more public hearings that:

7 (i) depending on the volume of water diverted or consumed, the applicable criteria and procedures
8 of subsection (2) or (4) are met;

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

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

12 (b) In determining whether the appropriator has proved by clear and convincing evidence that the
13 requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the
14 legislature shall consider the following factors:

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

16 (ii) whether the water that is the subject of the proposed change in appropriation might feasibly
17 be transported to alleviate water shortages within the state of Montana;

18 (iii) the supply and sources of water available to the applicant in the state where the applicant
19 intends to use the water; and

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

22 (c) When applying for a change in appropriation right to withdraw and transport water for use
23 outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing
24 the appropriation and use of water.

25 (7) For any application for a change in appropriation right involving 4,000 or more acre-feet of
26 water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the
27 proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with
28 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice and
29 may hold one or more hearings upon any other proposed change if it determines that such a change might
30 adversely affect the rights of other persons.

1 (8) The department or the legislature, if applicable, may approve a change subject to such terms,
2 conditions, restrictions, and limitations as it considers necessary to satisfy the criteria of this section,
3 including limitations on the time for completion of the change. The department may extend time limits
4 specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

5 (9) Upon actual application of water to the proposed beneficial use within the time allowed, the
6 appropriator shall notify the department that the appropriation has been completed. The notification must
7 contain a certified statement by a person with experience in the design, construction, or operation of
8 appropriation works describing how the appropriation was completed.

9 (10) If a change is not completed as approved by the department or legislature or if the terms,
10 conditions, restrictions, and limitations of the change approval are not complied with, the department may,
11 after notice and opportunity for hearing, require the appropriator to show cause why the change approval
12 should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may
13 modify or revoke the change approval.

14 (11) The original of a change approval issued by the department must be sent to the applicant, and
15 a duplicate must be kept in the office of the department in Helena.

16 (12) A person holding an issued permit or change approval that has not been perfected may change
17 the place of diversion, place of use, purpose of use, or place of storage by filing an application for change
18 pursuant to this section.

19 (13) A change in appropriation right contrary to the provisions of this section is invalid. An officer,
20 agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an
21 unauthorized change in appropriation right. A person or corporation may not, directly or indirectly,
22 personally or through an agent, officer, or employee, attempt to change an appropriation right except in
23 accordance with this section.

24 (14) The department may adopt rules to implement the provisions of this section. (Terminates June
25 30, 2005--sec. 6, Ch. 322, L. 1995.)

26 **85-2-402. (Effective July 1, 2005) Changes in appropriation rights.** (1) An appropriator may not
27 make a change in an appropriation right except, as permitted under this section, by applying for and
28 receiving the approval of the department or, if applicable, of the legislature. An applicant shall submit a
29 correct and complete application.

30 (2) Except as provided in subsections (4) through (6), the department shall approve a change in

1 appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are
2 met:

3 (a) The proposed use will not adversely affect the water rights of other persons or other planned
4 uses or developments for which a permit has been issued or for which water has been reserved.

5 (b) The proposed means of diversion, construction, and operation of the appropriation works are
6 adequate.

7 (c) The proposed use of water is a beneficial use.

8 (d) The applicant has a possessory interest, or the written consent of the person with the
9 possessory interest, in the property where the water is to be put to beneficial use.

10 (e) If the change in appropriation right involves salvaged water, the proposed water-saving methods
11 will salvage at least the amount of water asserted by the applicant.

12 (f) The water quality of an appropriator will not be adversely affected.

13 (g) The ability of a discharge permit holder to satisfy effluent limitations of a permit issued in
14 accordance with Title 75, chapter 5, part 4, will not be adversely affected.

15 (3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met
16 only if a valid objection is filed. A valid objection must contain substantial credible information establishing
17 to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not
18 be met.

19 (4) The department may not approve a change in purpose of use or place of use of an appropriation
20 of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the
21 appropriator proves by a preponderance of evidence that:

22 (a) the criteria in subsection (2) are met;

23 (b) the proposed change is a reasonable use. A finding of reasonable use must be based on a
24 consideration of:

25 (i) the existing demands on the state water supply, as well as projected demands for water for
26 future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows
27 for the protection of existing water rights and aquatic life;

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

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

30 (iv) the availability and feasibility of using low-quality water for the purpose for which application

1 has been made;

2 (v) the effects on private property rights by any creation of or contribution to saline seep; and

3 (vi) the probable significant adverse environmental impacts of the proposed use of water as
4 determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

5 (5) The department may not approve a change in purpose of use or place of use for a diversion that
6 results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being
7 consumed unless:

8 (a) the applicant proves by clear and convincing evidence and the department finds that the criteria
9 in subsections (2) and (4) are met; and

10 (b) the department then petitions the legislature and the legislature affirms the decision of the
11 department after one or more public hearings.

12 (6) The state of Montana has long recognized the importance of conserving its public waters and
13 the necessity to maintain adequate water supplies for the state's water requirements, including
14 requirements for reserved water rights held by the United States for federal reserved lands and in trust for
15 the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that,
16 under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict
17 with the public welfare of its citizens or the conservation of its waters, the following criteria must be met
18 before out-of-state use may occur:

19 (a) The department and, if applicable, the legislature may not approve a change in appropriation
20 right for the withdrawal and transportation of appropriated water for use outside the state unless the
21 appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one
22 or more public hearings that:

23 (i) depending on the volume of water diverted or consumed, the applicable criteria and procedures
24 of subsection (2) or (4) are met;

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

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

28 (b) In determining whether the appropriator has proved by clear and convincing evidence that the
29 requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the
30 legislature shall consider the following factors:

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

2 (ii) whether the water that is the subject of the proposed change in appropriation might feasibly
3 be transported to alleviate water shortages within the state of Montana;

4 (iii) the supply and sources of water available to the applicant in the state where the applicant
5 intends to use the water; and

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

8 (c) When applying for a change in appropriation right to withdraw and transport water for use
9 outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing
10 the appropriation and use of water.

11 (7) For any application for a change in appropriation right involving 4,000 or more acre-feet of
12 water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the
13 proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with
14 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice and
15 may hold one or more hearings upon any other proposed change if it determines that such a change might
16 adversely affect the rights of other persons.

17 (8) The department or the legislature, if applicable, may approve a change subject to such terms,
18 conditions, restrictions, and limitations as it considers necessary to satisfy the criteria of this section,
19 including limitations on the time for completion of the change. The department may extend time limits
20 specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

21 (9) Upon actual application of water to the proposed beneficial use within the time allowed, the
22 appropriator shall notify the department that the appropriation has been completed. The notification must
23 contain a certified statement by a person with experience in the design, construction, or operation of
24 appropriation works describing how the appropriation was completed.

25 (10) If a change is not completed as approved by the department or legislature or if the terms,
26 conditions, restrictions, and limitations of the change approval are not complied with, the department may,
27 after notice and opportunity for hearing, require the appropriator to show cause why the change approval
28 should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may
29 modify or revoke the change approval.

30 (11) The original of a change approval issued by the department must be sent to the applicant, and

1 a duplicate must be kept in the office of the department in Helena.

2 (12) A person holding an issued permit or change approval that has not been perfected may change
3 the place of diversion, place of use, purpose of use, or place of storage by filing an application for change
4 pursuant to this section.

5 (13) A change in appropriation right contrary to the provisions of this section is invalid. An officer,
6 agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an
7 unauthorized change in appropriation right. A person or corporation may not, directly or indirectly,
8 personally or through an agent, officer, or employee, attempt to change an appropriation right except in
9 accordance with this section.

10 (14) The department may adopt rules to implement the provisions of this section."
11

12 **NEW SECTION. Section 4. Upper Clark Fork River basin change and lease validity -- limitations.**

13 All temporary changes and leases authorized under 85-2-439 that are entered into prior to June 30, 2005,
14 remain valid until the expiration date of the temporary change and lease. A temporary change or lease
15 authorized under 85-2-439 may not be renewed or otherwise extended after June 30, 2005.
16

17 **NEW SECTION. Section 5. Codification instruction.** [Section ~~3~~ 4] is intended to be codified as an
18 integral part of Title 85, chapter 2, part 4, and the provisions of Title 85, chapter 2, part 4, apply to
19 [section ~~3~~ 4].
20

21 **NEW SECTION. Section 6. Effective date.** [This act] is effective on passage and approval.
22

-END-

SENATE BILL NO. 342

INTRODUCED BY BROOKE, BECK, SMITH, MOOD

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE BASIN CLOSURE, WATER LEASING, AND TEMPORARY CHANGE STATUTES AS THEY APPLY TO THE UPPER CLARK FORK RIVER BASIN; ALTERING THE COMPOSITION OF THE UPPER CLARK FORK BASIN STEERING COMMITTEE; AMENDING SECTIONS ~~85-2-336~~ 85-2-337 ~~AND~~, 85-2-338, ~~AND~~ 85-2-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

~~Section 1. Section 85-2-336, MCA, is amended to read:~~

~~"85-2-336. Basin closure — exception exceptions. (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section, the department may not process or grant an application for a permit to appropriate water within the Upper Clark Fork River basin.~~

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

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

~~(b) an application filed prior to January 1, 2000, for a permit to appropriate water to conduct response actions or remedial actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, or Title 75, chapter 10, part 7, at sites designated as of January 1, 1994. The total flow rates for all permits issued under this subsection (2)(b) may not exceed 10 cubic feet per second. A permit issued to conduct response actions or remedial actions may not be used for dilution and must be limited to a term not to exceed the necessary time to complete the response or remedial action, and the permit may not be transferred to any person for any purpose other than the designated response or remedial action;~~

~~(c) an application for a permit to appropriate water for stock use;~~

~~(d) an application to store water; or~~

~~(e) an application for power generation at existing hydroelectric dams. The department may not approve a permit for power generation if approval results in additional consumption of water.~~

~~(f) an application for a permit that contains an augmentation plan for providing sufficient~~

1 ~~augmentation water in amount, time, and location to replace depletions to senior water rights.~~

2 ~~(3) Applications for water reservations in the Upper Clark Fork River basin filed pursuant to~~
 3 ~~85-2-316 and pending as of May 1, 1991, have a priority date of May 1, 1991. The filing of a reservation~~
 4 ~~application does not provide standing to object under 85-2-402.~~

5 ~~(4) The department may not process or approve applications for reservations of water in the Upper~~
 6 ~~Clark Fork River basin filed pursuant to 85-2-316."~~

7

8 **SECTION 1. SECTION 85-2-337, MCA, IS AMENDED TO READ:**

9 **"85-2-337. Ground water permit applications -- report required.** (1) During the period of basin
 10 closure provided in 85-2-336(1), an applicant for a ground water permit in the Upper Clark Fork River basin
 11 shall submit a report prepared by a professional engineer or hydrologist ~~verifying that~~ addressing the
 12 hydrologic connection between the source of the ground water ~~is not a part of or substantially or directly~~
 13 ~~connected to~~ and surface water. If the applicant fails to submit the report required in this section, the
 14 application is considered defective and must be processed pursuant to 85-2-302.

15 (2) Except as provided in subsection (3), the department may not issue a permit to appropriate
 16 ground water in the Upper Clark Fork River basin unless the applicant proves by a preponderance of
 17 evidence, in addition to the criteria of 85-2-311, the department shall find, based on substantial credible
 18 evidence, that the source of the ground water is not a part of or substantially or directly connected to
 19 surface water.

20 (3) The department may issue a permit to appropriate ground water if the application includes an
 21 augmentation plan and if the applicant proves by a preponderance of evidence, in addition to the criteria
 22 of 85-2-311, that the augmentation plan provides sufficient augmentation water in amount, time, and
 23 location to replace depletions to senior water rights."

24

25 **Section 2.** Section 85-2-338, MCA, is amended to read:

26 **"85-2-338. Upper Clark Fork River basin steering committee -- membership and duties --**
 27 **comprehensive management plan.** (1) There is an Upper Clark Fork River basin steering committee. The
 28 steering committee has 22 members, who must be appointed as follows:

29 (a) Each of the six conservation districts in the basin may appoint a member.

30 (b) Each of the six county commissions in the basin may appoint a member.

1 (c) ~~The~~ department director shall appoint the ~~members of the committee, selecting them~~ remaining
 2 ~~ten~~ 10 committee members AND ANY ADDITIONAL COMMITTEE MEMBERS NOT APPOINTED UNDER
 3 SUBSECTIONS (1)(A) AND (1)(B) and shall ensure that committee membership includes a balance of
 4 affected basin interests and is in conformance with subsection (2).

5 (2) Steering committee members must be selected on the basis of their knowledge of water use,
 6 water management, fish, wildlife, recreation, water quality, and water conservation. Representation on the
 7 committee must include but is not limited to representatives from affected:

- 8 (a) ~~agricultural organizations~~ agriculture;
 9 (b) conservation districts;
 10 (c) departments of state government;
 11 (d) environmental organizations;
 12 (e) industries;
 13 (f) local governments;
 14 (g) reservation applicants;
 15 (h) utilities; and
 16 (i) ~~water user organizations~~ users not otherwise represented.

17 (3) Except as provided in subsection (4), steering committee members shall serve 4-year terms and
 18 may serve more than one term.

19 (4) Initial term lengths must be staggered in conformance with the following:

- 20 (a) conservation district appointees shall initially serve for 4 years;
 21 (b) county commissioner appointees shall initially serve for 2 years; and
 22 (c) as determined by the department, half of the department appointees shall initially serve for 2
 23 years and the remainder shall initially serve for 4 years.

24 ~~(2)~~(5) The steering committee, consistent with the Upper Clark Fork River basin comprehensive
 25 management plan, shall:

26 (a) review the Upper Clark Fork River basin closure and exceptions as provided in 85-2-336 no less
 27 than every 5 years after April 14, 1995, and make recommendations to the legislature regarding necessary
 28 changes;

29 ~~(b) make recommendations to the 1997 legislature concerning representation, terms, and the~~
 30 ~~method of appointing members to the steering committee;~~

- 1 ~~(e)~~(b) prepare and submit a report evaluating the Upper Clark Fork River basin instream flow pilot
2 program as provided in 85-2-439;
- 3 ~~(d)~~(c) prepare and submit a report concerning the relationship between surface water and ground
4 water and the cumulative impacts of ground water withdrawals in each subbasin;
- 5 ~~(e)~~(d) provide a forum for all interests to communicate about water issues;
- 6 ~~(f)~~(e) provide education about water law and water management issues;
- 7 ~~(g)~~(f) identify short-term and long-term water management issues and problems and identify
8 alternatives for resolving them;
- 9 ~~(h)~~(g) identify the potential beneficiaries of and a funding mechanism for new and expanded water
10 storage sites;
- 11 ~~(i)~~(h) assist in facilitating the resolution of water-related disputes;
- 12 ~~(j)~~(i) provide coordination with other basin management and planning efforts;
- 13 ~~(k)~~(j) advise government agencies about water management and permitting activities;
- 14 ~~(l)~~(k) consult with local governments within the Upper Clark Fork River basin; and
- 15 ~~(m)~~(l) report periodically to the legislature."

16

17 **SECTION 3. SECTION 85-2-402, MCA, IS AMENDED TO READ:**

18 **"85-2-402. (Temporary) Changes in appropriation rights.** (1) An appropriator may not make a
19 change in an appropriation right except, as permitted under this section, by applying for and receiving the
20 approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and
21 complete application.

22 (2) Except as provided in subsections (4) through (6), the department shall approve a change in
23 appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are
24 met:

25 (a) The proposed use will not adversely affect the water rights of other persons or other planned
26 uses or developments for which a permit has been issued or for which water has been reserved.

27 (b) Except for a lease authorization pursuant to 85-2-436, a temporary change authorization for
28 instream use to benefit the fishery resource pursuant to 85-2-408, or water use pursuant to 85-2-439 when
29 authorization does not require appropriation works, the proposed means of diversion, construction, and
30 operation of the appropriation works are adequate.

1 (c) The proposed use of water is a beneficial use.

2 (d) Except for a lease authorization pursuant to 85-2-436 or a temporary change authorization
3 pursuant to 85-2-408 or 85-2-439 for instream flow to benefit the fishery resource, the applicant has a
4 possessory interest, or the written consent of the person with the possessory interest, in the property
5 where the water is to be put to beneficial use.

6 (e) If the change in appropriation right involves salvaged water, the proposed water-saving methods
7 will salvage at least the amount of water asserted by the applicant.

8 (f) The water quality of an appropriator will not be adversely affected.

9 (g) The ability of a discharge permit holder to satisfy effluent limitations of a permit issued in
10 accordance with Title 75, chapter 5, part 4, will not be adversely affected.

11 (3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met
12 only if a valid objection is filed. A valid objection must contain substantial credible information establishing
13 to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not
14 be met.

15 (4) The department may not approve a change in purpose of use or place of use of an appropriation
16 of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the
17 appropriator proves by a preponderance of evidence that:

18 (a) the criteria in subsection (2) are met; and

19 (b) the proposed change is a reasonable use. A finding of reasonable use must be based on a
20 consideration of:

21 (i) the existing demands on the state water supply, as well as projected demands for water for
22 future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows
23 for the protection of existing water rights and aquatic life;

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

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

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

28 (v) the effects on private property rights by any creation of or contribution to saline seep; and

29 (vi) the probable significant adverse environmental impacts of the proposed use of water as
30 determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

1 (5) The department may not approve a change in purpose of use or place of use for a diversion that
2 results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being
3 consumed unless:

4 (a) the applicant proves by clear and convincing evidence and the department finds that the criteria
5 in subsections (2) and (4) are met; and

6 (b) the department then petitions the legislature and the legislature affirms the decision of the
7 department after one or more public hearings.

8 (6) The state of Montana has long recognized the importance of conserving its public waters and
9 the necessity to maintain adequate water supplies for the state's water requirements, including
10 requirements for reserved water rights held by the United States for federal reserved lands and in trust for
11 the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that,
12 under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict
13 with the public welfare of its citizens or the conservation of its waters, the following criteria must be met
14 before out-of-state use may occur:

15 (a) The department and, if applicable, the legislature may not approve a change in appropriation
16 right for the withdrawal and transportation of appropriated water for use outside the state unless the
17 appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one
18 or more public hearings that:

19 (i) depending on the volume of water diverted or consumed, the applicable criteria and procedures
20 of subsection (2) or (4) are met;

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

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

24 (b) In determining whether the appropriator has proved by clear and convincing evidence that the
25 requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the
26 legislature shall consider the following factors:

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

28 (ii) whether the water that is the subject of the proposed change in appropriation might feasibly
29 be transported to alleviate water shortages within the state of Montana;

30 (iii) the supply and sources of water available to the applicant in the state where the applicant

1 intends to use the water; and

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

4 (c) When applying for a change in appropriation right to withdraw and transport water for use
5 outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing
6 the appropriation and use of water.

7 (7) For any application for a change in appropriation right involving 4,000 or more acre-feet of
8 water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the
9 proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with
10 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice and
11 may hold one or more hearings upon any other proposed change if it determines that a change might
12 adversely affect the rights of other persons.

13 (8) The department or the legislature, if applicable, may approve a change subject to terms,
14 conditions, restrictions, and limitations as it considers necessary to satisfy the criteria of this section,
15 including limitations on the time for completion of the change. The department may extend time limits
16 specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

17 (9) Upon actual application of water to the proposed beneficial use within the time allowed, the
18 appropriator shall notify the department that the appropriation has been completed. The notification must
19 contain a certified statement by a person with experience in the design, construction, or operation of
20 appropriation works describing how the appropriation was completed.

21 (10) If a change is not completed as approved by the department or legislature or if the terms,
22 conditions, restrictions, and limitations of the change approval are not complied with, the department may,
23 after notice and opportunity for hearing, require the appropriator to show cause why the change approval
24 should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may
25 modify or revoke the change approval.

26 (11) The original of a change approval issued by the department must be sent to the applicant, and
27 a duplicate must be kept in the office of the department in Helena.

28 (12) A person holding an issued permit or change approval that has not been perfected may change
29 the place of diversion, place of use, purpose of use, or place of storage by filing an application for change
30 pursuant to this section.

1 (13) A change in appropriation right contrary to the provisions of this section is invalid. An officer,
2 agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an
3 unauthorized change in appropriation right. A person or corporation may not, directly or indirectly,
4 personally or through an agent, officer, or employee, attempt to change an appropriation right except in
5 accordance with this section.

6 (14) The department may adopt rules to implement the provisions of this section. (Terminates June
7 30, 1999--sec. 4, Ch. 740, L. 1991.)

8 **85-2-402. (Effective July 1, 1999) Changes in appropriation rights.** (1) An appropriator may not
9 make a change in an appropriation right except, as permitted under this section, by applying for and
10 receiving the approval of the department or, if applicable, of the legislature. An applicant shall submit a
11 correct and complete application.

12 (2) Except as provided in subsections (4) through (6), the department shall approve a change in
13 appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are
14 met:

15 (a) The proposed use will not adversely affect the water rights of other persons or other planned
16 uses or developments for which a permit has been issued or for which water has been reserved.

17 (b) Except for a temporary change authorization pursuant to 85-2-408 or for water use pursuant
18 to 85-2-439 that does not require appropriation works, the proposed means of diversion, construction, and
19 operation of the appropriation works are adequate.

20 (c) The proposed use of water is a beneficial use.

21 (d) Except for a temporary change authorization pursuant to 85-2-408 or 85-2-439 for instream
22 flow to benefit the fishery resource, the applicant has a possessory interest, or the written consent of the
23 person with the possessory interest, in the property where the water is to be put to beneficial use.

24 (e) If the change in appropriation right involves salvaged water, the proposed water-saving methods
25 will salvage at least the amount of water asserted by the applicant.

26 (f) The water quality of an appropriator will not be adversely affected.

27 (g) The ability of a discharge permit holder to satisfy effluent limitations of a permit issued in
28 accordance with Title 75, chapter 5, part 4, will not be adversely affected.

29 (3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met
30 only if a valid objection is filed. A valid objection must contain substantial credible information establishing

1 to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not
2 be met.

3 (4) The department may not approve a change in purpose of use or place of use of an appropriation
4 of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the
5 appropriator proves by a preponderance of evidence that:

6 (a) the criteria in subsection (2) are met; and

7 (b) the proposed change is a reasonable use. A finding of reasonable use must be based on a
8 consideration of:

9 (i) the existing demands on the state water supply, as well as projected demands for water for
10 future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows
11 for the protection of existing water rights and aquatic life;

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

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

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

16 (v) the effects on private property rights by any creation of or contribution to saline seep; and

17 (vi) the probable significant adverse environmental impacts of the proposed use of water as
18 determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

19 (5) The department may not approve a change in purpose of use or place of use for a diversion that
20 results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being
21 consumed unless:

22 (a) the applicant proves by clear and convincing evidence and the department finds that the criteria
23 in subsections (2) and (4) are met; and

24 (b) the department then petitions the legislature and the legislature affirms the decision of the
25 department after one or more public hearings.

26 (6) The state of Montana has long recognized the importance of conserving its public waters and
27 the necessity to maintain adequate water supplies for the state's water requirements, including
28 requirements for reserved water rights held by the United States for federal reserved lands and in trust for
29 the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that,
30 under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict

1 with the public welfare of its citizens or the conservation of its waters, the following criteria must be met
2 before out-of-state use may occur:

3 (a) The department and, if applicable, the legislature may not approve a change in appropriation
4 right for the withdrawal and transportation of appropriated water for use outside the state unless the
5 appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one
6 or more public hearings that:

7 (i) depending on the volume of water diverted or consumed, the applicable criteria and procedures
8 of subsection (2) or (4) are met;

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

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

12 (b) In determining whether the appropriator has proved by clear and convincing evidence that the
13 requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the
14 legislature shall consider the following factors:

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

16 (ii) whether the water that is the subject of the proposed change in appropriation might feasibly
17 be transported to alleviate water shortages within the state of Montana;

18 (iii) the supply and sources of water available to the applicant in the state where the applicant
19 intends to use the water; and

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

22 (c) When applying for a change in appropriation right to withdraw and transport water for use
23 outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing
24 the appropriation and use of water.

25 (7) For any application for a change in appropriation right involving 4,000 or more acre-feet of
26 water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the
27 proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with
28 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice and
29 may hold one or more hearings upon any other proposed change if it determines that such a change might
30 adversely affect the rights of other persons.

1 (8) The department or the legislature, if applicable, may approve a change subject to such terms,
2 conditions, restrictions, and limitations as it considers necessary to satisfy the criteria of this section,
3 including limitations on the time for completion of the change. The department may extend time limits
4 specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

5 (9) Upon actual application of water to the proposed beneficial use within the time allowed, the
6 appropriator shall notify the department that the appropriation has been completed. The notification must
7 contain a certified statement by a person with experience in the design, construction, or operation of
8 appropriation works describing how the appropriation was completed.

9 (10) If a change is not completed as approved by the department or legislature or if the terms,
10 conditions, restrictions, and limitations of the change approval are not complied with, the department may,
11 after notice and opportunity for hearing, require the appropriator to show cause why the change approval
12 should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may
13 modify or revoke the change approval.

14 (11) The original of a change approval issued by the department must be sent to the applicant, and
15 a duplicate must be kept in the office of the department in Helena.

16 (12) A person holding an issued permit or change approval that has not been perfected may change
17 the place of diversion, place of use, purpose of use, or place of storage by filing an application for change
18 pursuant to this section.

19 (13) A change in appropriation right contrary to the provisions of this section is invalid. An officer,
20 agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an
21 unauthorized change in appropriation right. A person or corporation may not, directly or indirectly,
22 personally or through an agent, officer, or employee, attempt to change an appropriation right except in
23 accordance with this section.

24 (14) The department may adopt rules to implement the provisions of this section. (Terminates June
25 30, 2005--sec. 6, Ch. 322, L. 1995.)

26 **85-2-402. (Effective July 1, 2005) Changes in appropriation rights.** (1) An appropriator may not
27 make a change in an appropriation right except, as permitted under this section, by applying for and
28 receiving the approval of the department or, if applicable, of the legislature. An applicant shall submit a
29 correct and complete application.

30 (2) Except as provided in subsections (4) through (6), the department shall approve a change in

1 appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are
2 met:

3 (a) The proposed use will not adversely affect the water rights of other persons or other planned
4 uses or developments for which a permit has been issued or for which water has been reserved.

5 (b) The proposed means of diversion, construction, and operation of the appropriation works are
6 adequate.

7 (c) The proposed use of water is a beneficial use.

8 (d) The applicant has a possessory interest, or the written consent of the person with the
9 possessory interest, in the property where the water is to be put to beneficial use.

10 (e) If the change in appropriation right involves salvaged water, the proposed water-saving methods
11 will salvage at least the amount of water asserted by the applicant.

12 (f) The water quality of an appropriator will not be adversely affected.

13 (g) The ability of a discharge permit holder to satisfy effluent limitations of a permit issued in
14 accordance with Title 75, chapter 5, part 4, will not be adversely affected.

15 (3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met
16 only if a valid objection is filed. A valid objection must contain substantial credible information establishing
17 to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not
18 be met.

19 (4) The department may not approve a change in purpose of use or place of use of an appropriation
20 of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the
21 appropriator proves by a preponderance of evidence that:

22 (a) the criteria in subsection (2) are met;

23 (b) the proposed change is a reasonable use. A finding of reasonable use must be based on a
24 consideration of:

25 (i) the existing demands on the state water supply, as well as projected demands for water for
26 future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows
27 for the protection of existing water rights and aquatic life;

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

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

30 (iv) the availability and feasibility of using low-quality water for the purpose for which application

1 has been made;

2 (v) the effects on private property rights by any creation of or contribution to saline seep; and

3 (vi) the probable significant adverse environmental impacts of the proposed use of water as
4 determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

5 (5) The department may not approve a change in purpose of use or place of use for a diversion that
6 results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being
7 consumed unless:

8 (a) the applicant proves by clear and convincing evidence and the department finds that the criteria
9 in subsections (2) and (4) are met; and

10 (b) the department then petitions the legislature and the legislature affirms the decision of the
11 department after one or more public hearings.

12 (6) The state of Montana has long recognized the importance of conserving its public waters and
13 the necessity to maintain adequate water supplies for the state's water requirements, including
14 requirements for reserved water rights held by the United States for federal reserved lands and in trust for
15 the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that,
16 under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict
17 with the public welfare of its citizens or the conservation of its waters, the following criteria must be met
18 before out-of-state use may occur:

19 (a) The department and, if applicable, the legislature may not approve a change in appropriation
20 right for the withdrawal and transportation of appropriated water for use outside the state unless the
21 appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one
22 or more public hearings that:

23 (i) depending on the volume of water diverted or consumed, the applicable criteria and procedures
24 of subsection (2) or (4) are met;

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

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

28 (b) In determining whether the appropriator has proved by clear and convincing evidence that the
29 requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the
30 legislature shall consider the following factors:

- 1 (i) whether there are present or projected water shortages within the state of Montana;
- 2 (ii) whether the water that is the subject of the proposed change in appropriation might feasibly
3 be transported to alleviate water shortages within the state of Montana;
- 4 (iii) the supply and sources of water available to the applicant in the state where the applicant
5 intends to use the water; and
- 6 (iv) the demands placed on the applicant's supply in the state where the applicant intends to use
7 the water.
- 8 (c) When applying for a change in appropriation right to withdraw and transport water for use
9 outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing
10 the appropriation and use of water.
- 11 (7) For any application for a change in appropriation right involving 4,000 or more acre-feet of
12 water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the
13 proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with
14 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice and
15 may hold one or more hearings upon any other proposed change if it determines that such a change might
16 adversely affect the rights of other persons.
- 17 (8) The department or the legislature, if applicable, may approve a change subject to such terms,
18 conditions, restrictions, and limitations as it considers necessary to satisfy the criteria of this section,
19 including limitations on the time for completion of the change. The department may extend time limits
20 specified in the change approval under the applicable criteria and procedures of 85-2-312(3).
- 21 (9) Upon actual application of water to the proposed beneficial use within the time allowed, the
22 appropriator shall notify the department that the appropriation has been completed. The notification must
23 contain a certified statement by a person with experience in the design, construction, or operation of
24 appropriation works describing how the appropriation was completed.
- 25 (10) If a change is not completed as approved by the department or legislature or if the terms,
26 conditions, restrictions, and limitations of the change approval are not complied with, the department may,
27 after notice and opportunity for hearing, require the appropriator to show cause why the change approval
28 should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may
29 modify or revoke the change approval.
- 30 (11) The original of a change approval issued by the department must be sent to the applicant, and

1 a duplicate must be kept in the office of the department in Helena.

2 (12) A person holding an issued permit or change approval that has not been perfected may change
3 the place of diversion, place of use, purpose of use, or place of storage by filing an application for change
4 pursuant to this section.

5 (13) A change in appropriation right contrary to the provisions of this section is invalid. An officer,
6 agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an
7 unauthorized change in appropriation right. A person or corporation may not, directly or indirectly,
8 personally or through an agent, officer, or employee, attempt to change an appropriation right except in
9 accordance with this section.

10 (14) The department may adopt rules to implement the provisions of this section."
11

12 **NEW SECTION. Section 4. Upper Clark Fork River basin change and lease validity -- limitations.**

13 All temporary changes and leases authorized under 85-2-439 that are entered into prior to June 30, 2005,
14 remain valid until the expiration date of the temporary change and lease. A temporary change or lease
15 authorized under 85-2-439 may not be renewed or otherwise extended after June 30, 2005.
16

17 **NEW SECTION. Section 5. Codification instruction.** [Section ~~3~~ 4] is intended to be codified as an
18 integral part of Title 85, chapter 2, part 4, and the provisions of Title 85, chapter 2, part 4, apply to
19 [section ~~3~~ 4].
20

21 **NEW SECTION. Section 6. Effective date.** [This act] is effective on passage and approval.
22

-END-