

HOUSE BILL NO. 580

INTRODUCED BY J. SECKINGER, W. GALT, S. NOVAK, E. ALBUS, D. HARVEY, G. LAMMERS, D. LOGE,  
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A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING WATER RIGHT ABANDONMENT LAWS TO  
ADDRESS A REDUCTION IN USE OR THE NONUSE OF AN APPROPRIATION RIGHT DURING PERIODS  
OF DROUGHT; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTION 85-2-404, MCA."

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

**Section 1.** Section 85-2-404, MCA, is amended to read:

**"85-2-404. Abandonment of appropriation right.** (1) If an appropriator ceases to use all or a part of  
an appropriation right with the intention of wholly or partially abandoning the right or if the appropriator ceases  
using the appropriation right according to its terms and conditions with the intention of not complying with those  
terms and conditions, the appropriation right is, to that extent, considered abandoned and must immediately  
expire.

(2) If an appropriator ceases to use all or part of an appropriation right or ceases using the  
appropriation right according to its terms and conditions for a period of 10 successive years and there was  
water available for use, there is a prima facie presumption that the appropriator has abandoned the right for the  
part not used.

(3) If an appropriator ceases to use all or part of an appropriation right in compliance with a  
candidate conservation agreement initiated pursuant to 50 CFR 17.32 or because the land to which the water is  
applied to a beneficial use is contracted under a state or federal conservation set-aside program:

(a) the set-aside and resulting reduction in use of the appropriation right does not represent an  
intent by the appropriator to wholly or partially abandon the appropriation right or to not comply with the terms  
and conditions attached to the right; and

(b) the period of nonuse that occurs for part or all of the appropriation right as a result of the  
contract may not create or may not be added to any previous period of nonuse to create a prima facie

(4) If an appropriator ceases to use all or part of an appropriation right during a drought, the reduction in use or the nonuse of the appropriation right does not by itself represent an intent by the appropriator to wholly or partially abandon the appropriation right or to not comply with the terms and conditions attached to the appropriation right if:

8           (b) the reduction in use or the nonuse is made in compliance with a local, regional, or state  
9 drought plan that identifies a metric or criterion that compels the voluntary reduction or cessation of water  
10 diversions in a geographic area or for water rights included in the drought plan.

14           ~~(5)(6)~~ Subsections (1) and (2) do not apply to existing rights until they have been finally determined in  
15   accordance with part 2 of this chapter."

16 - END -