

SENATE BILL NO. 47

INTRODUCED BY C. VINCENT

BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE DEFINITIONS OF "CONSERVED WATER" AND "SALVAGE WATER"; AND AMENDING SECTIONS 85-2-102 AND 85-2-419, MCA."

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

Section 1. Section 85-2-102, MCA, is amended to read:

"85-2-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Appropriate" means:

(a) to divert, impound, or withdraw, including by stock for stock water, a quantity of water for a beneficial use;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316;

(c) in the case of the department of fish, wildlife, and parks, to change an appropriation right to instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource in accordance with 85-2-436;

(d) in the case of the United States department of agriculture, forest service:

(i) instream flows and in situ use of water created in 85-20-1401, Article V; or

(ii) to change an appropriation right to divert or withdraw water under subsection (1)(a) to instream flow to protect, maintain, or enhance streamflows in accordance with 85-2-320;

(e) temporary changes or leases for instream flow to maintain or enhance instream flow to benefit the fishery resource in accordance with 85-2-408;

(f) a use of water for aquifer recharge or mitigation; or

(g) a use of water for an aquifer storage and recovery project as provided in 85-2-368.

(2) "Aquifer recharge" means either the controlled subsurface addition of water directly to the aquifer or controlled application of water to the ground surface for the purpose of replenishing the aquifer to offset adverse effects resulting from net depletion of surface water.

(3) "Aquifer storage and recovery project" means a project involving the use of an aquifer to temporarily

1 store water through various means, including but not limited to injection, surface spreading and infiltration, drain
2 fields, or another department-approved method. The stored water may be either pumped from the injection well
3 or other wells for beneficial use or allowed to naturally drain away for a beneficial use.

4 (4) "Beneficial use", unless otherwise provided, means:

5 (a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited
6 to agricultural, stock water, domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and
7 recreational uses;

8 (b) a use of water appropriated by the department for the state water leasing program under 85-2-141
9 and of water leased under a ~~valid~~ lease issued by the department under 85-2-141;

10 (c) a use of water by the department of fish, wildlife, and parks through a change in an appropriation right
11 for instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource authorized under
12 85-2-436;

13 (d) a use of water through a temporary change in appropriation right or lease to enhance instream flow
14 to benefit the fishery resource in accordance with 85-2-408;

15 (e) a use of water for aquifer recharge or mitigation; or

16 (f) a use of water for an aquifer storage and recovery project as provided in 85-2-368.

17 (5) "Certificate" means a certificate of water right issued by the department.

18 (6) "Change in appropriation right" means a change in the place of diversion, the place of use, the
19 purpose of use, or the place of storage.

20 (7) "Commission" means the fish and wildlife commission provided for in 2-15-3402.

21 (8) "Conserved water" means to make water available for a beneficial use from an existing appropriation
22 right by applying a water-saving method. The method must reduce the historic consumption of the existing
23 appropriation right.

24 ~~(8)~~(9) "Correct and complete" means that the information required to be submitted conforms to the
25 standard of substantial credible information and that all of the necessary parts of the form requiring the
26 information have been filled in with the required information for the department to begin evaluating the
27 information.

28 ~~(9)~~(10) "Declaration" means the declaration of an existing right filed with the department under section
29 8, Chapter 452, Laws of 1973.

30 ~~(10)~~(11) "Department" means the department of natural resources and conservation provided for in Title

2, chapter 15, part 33.

~~(11)~~(12) "Developed spring" means any point where ground water emerges naturally, that has subsequently been physically altered, and from which ground water flows under natural pressures or is artificially withdrawn.

~~(12)~~(13) "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.

~~(13)~~(14) "Ground water" means any water that is beneath the ground surface.

~~(14)~~(15) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

~~(15)~~(16) "Mitigation" means the reallocation of surface water or ground water through a change in appropriation right or other means that does not result in surface water being introduced into an aquifer through aquifer recharge to offset adverse effects resulting from net depletion of surface water.

~~(16)~~(17) "Municipality" means an incorporated city or town organized and incorporated under Title 7, chapter 2.

~~(17)~~(18) (a) "National forest system lands" means all lands within Montana that are owned by the United States and administered by the secretary of agriculture through the forest service.

(b) The term does not include any lands within the exterior boundaries of national forest system units that are not owned by the United States and administered by the secretary of agriculture through the forest service.

~~(18)~~(19) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

~~(19)~~(20) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.

~~(20)~~(21) (a) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water.

(b) The term does not mean a private corporation, association, or group.

~~(21)~~(22) "Salvage water" or "salvaged water" means to make water available from an existing appropriation right for nonconsumptive beneficial use from an existing valid appropriation through application of by applying a water-saving methods method. The method must reduce the flow rate or volume of water that was

historically diverted but not consumed by the existing appropriation right.

~~(22)~~(23) "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.

~~(23)~~(24) "Stream depletion zone" means an area where hydrogeologic modeling concludes that as a result of a ground water withdrawal, the surface water would be depleted by a rate equal to at least 30% of the ground water withdrawn within 30 days after the first day a well or developed spring is pumped at a rate of 35 gallons a minute.

~~(24)~~(25) "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

~~(25)~~(26) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

~~(26)~~(27) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

~~(27)~~(28) "Water division" means a drainage basin as defined in 3-7-102.

~~(28)~~(29) "Water judge" means a judge as provided for in Title 3, chapter 7.

~~(29)~~(30) "Water master" means a master as provided for in Title 3, chapter 7.

~~(30)~~(31) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

~~(31)~~(32) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn."

Section 2. Section 85-2-419, MCA, is amended to read:

"85-2-419. Salvaged water -- conserved water. (1) It is the declared policy of the state in 85-1-101 to encourage the conservation and full use of water. ~~Consistent with this policy, holders of appropriation rights who salvage water~~ An appropriator may retain the right to the salvaged water for nonconsumptive beneficial use. An appropriator may retain the right to conserved water for any beneficial use.

(2) ~~Except for a short-term lease pursuant to 85-2-410, any use of the right to salvaged water for any purpose or in any place other than that associated with the original appropriation right~~ or conserved water that

1 includes a change in the place of diversion, the place of use, the purpose of use, or the place of storage must
2 be approved by the department as a change in appropriation right in accordance with ~~85-2-402 and 85-2-436,~~
3 if applicable part 4 of this chapter. ~~Sale of the right to salvaged water must also be in accordance with 85-2-403,~~
4 ~~and the lease of the right to salvaged water must be in accordance with 85-2-408, 85-2-410, or 85-2-436.~~

5 (3) The department may authorize a change in appropriation right for salvaged water for a
6 nonconsumptive beneficial use at a point upstream from the location where return flows historically return to the
7 source."

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