

1 \_\_\_\_\_ BILL NO. \_\_\_\_\_  
 2 INTRODUCED BY \_\_\_\_\_  
 3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING WATER RIGHT ABANDONMENT LAWS TO  
 5 ADDRESS A REDUCTION IN USE OR THE NONUSE OF AN APPROPRIATION RIGHT DURING PERIODS  
 6 OF DROUGHT; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTION 85-2-404, MCA."

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

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

11 **"85-2-404. Abandonment of appropriation right.** (1) If an appropriator ceases to use all or a part of  
 12 an appropriation right with the intention of wholly or partially abandoning the right or if the appropriator ceases  
 13 using the appropriation right according to its terms and conditions with the intention of not complying with those  
 14 terms and conditions, the appropriation right is, to that extent, considered abandoned and must immediately  
 15 expire.

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

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

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

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

