

1 HOUSE BILL NO. 114
2 INTRODUCED BY S. VINTON
3 BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE APPLICATION PROCESS AND DEPARTMENT
6 CONSIDERATION OF A PERMIT OR CHANGE IN AN APPROPRIATION RIGHT; REVISING TIMELINES
7 FOR DEPARTMENT CONSIDERATION OF AN APPLICATION FOR A WATER RIGHT OR A CHANGE OF
8 WATER RIGHT; REVISING NOTICE; PROVIDING FOR PRELIMINARY DETERMINATIONS OF A WATER
9 RIGHT APPLICATION OR A CHANGE OF WATER RIGHT; PROVIDING FOR PUBLIC COMMENT;
10 REVISING THE OBJECTIONS PROCESS; REVISING DEPARTMENT HEARINGS; EXTENDING
11 RULEMAKING AUTHORITY; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 85-2-302, 85-2-
12 307, 85-2-308, 85-2-310, AND 85-2-401, MCA; AND PROVIDING EFFECTIVE DATES."

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
15

16 **Section 1.** Section 85-2-302, MCA, is amended to read:

17 **"85-2-302. Application for permit or change in appropriation right.** (1) Except as provided in 85-2-
18 306 and 85-2-369, a person may not appropriate water or commence construction of diversion, impoundment,
19 withdrawal, or related distribution works unless the person applies for and receives a permit or an authorization
20 for a change in appropriation right from the department.

21 (2) The department shall adopt rules:

22 (a) for the premeeting application process pursuant to subsection (3)(b);

23 (b) that are necessary to determine whether or not an application is correct and complete, based
24 on the provisions applicable to issuance of a permit under this part or a change in appropriation right pursuant
25 to Title 85, chapter 2, part 4. ~~The rules must be adopted;~~ and

26 (c) in compliance with Title 2, chapter 4.

27 (3) (a) The application must be made on a form prescribed by the department. The department
28 shall make the forms available through its offices.

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- 2023

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Drafter: Julie Johnson, 406-444-4024

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- 1 (A) each person who will use the water and the amount of water each person will use;
- 2 (B) the proposed place of use of all water by each person;
- 3 (C) the nature of the relationship between the applicant and each person using the water; and
- 4 (D) each firm contractual agreement for the specified amount of water for each person using the
- 5 water; or
- 6 (d) the appropriate environmental impact statement costs or fees, if any, are not paid as required
- 7 by 85-2-124.

8 ~~(40)(9)~~ If water applied for is to be marketed by the applicant to other users for the purpose of aquifer
9 recharge or mitigation, the applicant is exempt from the provisions of subsection ~~(9)~~ (8)(c)(v). The applicant
10 ~~must~~ shall provide information detailing the proposed place of use."
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12 **Section 5.** Section 85-2-401, MCA, is amended to read:

13 **"85-2-401. Priority -- recognition and confirmation of changes in appropriations issued after**
14 **July 1, 1973.** (1) As between appropriators, the first in time is the first in right. Priority of appropriation does not
15 include the right to prevent changes by later appropriators in the condition of water occurrence, such as the
16 increase or decrease of streamflow or the lowering of a water table, artesian pressure, or water level, if the prior
17 appropriator can reasonably exercise the water right under the changed conditions.

18 (2) Priority of appropriation made under this chapter dates from the filing of an application for a
19 permit with the department, except as otherwise provided in 85-2-301 through 85-2-303, 85-2-306, 85-2-
20 310~~(8)~~(7), and 85-2-313.

21 (3) Priority of appropriation perfected before July 1, 1973, must be determined as provided in part
22 2 of this chapter.

23 (4) All changes in appropriation rights actions of the department after July 1, 1973, are recognized
24 and confirmed subject to this part and any terms, conditions, and limitations placed on a change in
25 appropriation authorization by the department."
26

27 NEW SECTION. **Section 6. Appropriation.** (1) There is appropriated ~~\$1,276,597~~ \$638,299 from the
28 general fund to the department of natural resources and conservation in fiscal year 2024 and ~~\$1,208,050~~

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1 \$604,025 in fiscal year 2025. The appropriation is intended to partially fund 13.00 FTE and associated
2 operating costs.

3 (2) There is appropriated \$638,299 to the department of natural resources and conservation from
4 a state special revenue account to the credit of the department of natural resources and conservation in fiscal
5 year 2024 and \$604,025 in fiscal year 2025. The appropriation is intended to partially fund 13.00 FTE and
6 associated operating costs.

7 (2)(3) It is the intent of the legislature that the appropriation for fiscal year 2025 and the 13.00 FTE be
8 included as part of the base budget for the department of natural resources and conservation for the biennium
9 beginning July 1, 2025, and that the state special revenue would be derived from fees charged to applicants.

10
11 NEW SECTION. Section 7. Notification to tribal governments. The secretary of state shall send a
12 copy of [this act] to each federally recognized tribal government in Montana.

13
14 NEW SECTION. Section 8. Effective dates. (1) Except as provided in subsection (2), [this act] is
15 effective January 1, 2024.

16 (2) [Section 6] and this section are effective July 1, 2023.

17 - END -