

1 SENATE BILL NO. 404

2 INTRODUCED BY G. HERTZ

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A WATER METER FOR AN APPROPRIATION
5 EXEMPT FROM PERMITTING REQUIREMENTS; REQUIRING A PROCESSING FEE; AND AMENDING
6 SECTIONS 85-2-113 AND 85-2-306, MCA."

7

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

9

10 **Section 1.** Section 85-2-113, MCA, is amended to read:

11 **"85-2-113. Department powers and duties.** (1) The department may prescribe fees or service
12 charges for any public service rendered by the department under this chapter, including fees for the filing of
13 applications or for the issuance of permits and certificates, for rulemaking hearings under 85-2-319, for
14 administrative hearings conducted under this chapter, for investigations concerning permit revocation, for field
15 verification of issued and completed permits, and for all change approvals. There may not be fees for any
16 action taken by the department at the request of the water judge or for the issuance of certificates of existing
17 rights.

18 (2) The department may adopt rules necessary to implement and carry out the purposes and
19 provisions of this chapter. These rules may include but are not limited to rules to:

20 (a) govern the issuance and terms of interim permits authorizing an applicant for a regular permit
21 under this chapter to begin appropriating water immediately, pending final approval or denial by the department
22 of the application for a regular permit;

23 (b) require the owner or operator of appropriation facilities to install and maintain suitable controlling
24 and measuring devices, ~~except that the department may not require a meter on a water well outside of a~~
25 ~~controlled ground water area or proposed controlled ground water area unless the maximum appropriation of~~
26 ~~the well is in excess of the limitation contained in 85-2-306;~~

27 (c) require the owner or operator of appropriation facilities to report to the department the readings of
28 measuring devices at reasonable intervals and to file reports on appropriations; and

1 (d) regulate the construction, use, and sealing of wells to prevent the waste, contamination, or
2 pollution of ground water.

3 (3) The department shall adopt rules providing for and governing temporary emergency
4 appropriations, including for emergency fire training and emergency fire-related operations, without prior
5 application for a permit, necessary to protect lives or property.

6 (4) (a) The department shall adopt rules to require the owner or operator of an appropriation facility
7 on a watercourse or portions of a watercourse identified as chronically dewatered by the department under 85-
8 2-150 to acquire, install, and maintain a suitable controlling and measuring device no later than 2 years after
9 designation of the watercourse or portions of the watercourse as chronically dewatered, except that when the
10 department specifically finds that the installation of measuring devices along the entire watercourse or portions
11 of the watercourse is not practicable within the 2-year deadline, it may establish a later deadline.

12 (b) For the purposes of subsection (4), an appropriation facility includes but is not limited to any
13 method used to divert, impound, or withdraw water from a watercourse. Hydroelectric facilities that are using
14 recognized methods of flow measurement, as determined by the department, are in compliance with subsection
15 (4)."

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17 **Section 2.** Section 85-2-306, MCA, is amended to read:

18 **"85-2-306. Exceptions to permit requirements.** (1) (a) Except as provided in subsection (1)(b),
19 ground water may be appropriated only by a person who has a possessory interest in the property where the
20 water is to be put to beneficial use and exclusive property rights in the ground water development works.

21 (b) If another person has rights in the ground water development works, water may be appropriated
22 with the written consent of the person with those property rights or, if the ground water development works are
23 on national forest system lands, with any prior written special use authorization required by federal law to
24 occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage,
25 transportation, withdrawal, use, or distribution of water under the certificate.

26 (c) If the person does not have a possessory interest in the real property from which the ground water
27 may be appropriated, the person shall provide to the owner of the real property written notification of the works
28 and the person's intent to appropriate ground water from the works. The written notification must be provided to

1 the landowner at least 30 days prior to constructing any associated works or, if no new or expanded works are
2 proposed, 30 days prior to appropriating the water. The written notification under this subsection is a notice
3 requirement only and does not create an easement in or over the real property where the ground water
4 development works are located.

5 (2) Inside the boundaries of a controlled ground water area, ground water may be appropriated only:

6 (a) according to a permit received pursuant to 85-2-508; or

7 (b) according to the requirements of a rule promulgated pursuant to 85-2-506.

8 (3) (a) Outside the boundaries of a controlled ground water area, a permit is not required before
9 appropriating ground water by means of a well or developed spring:

10 (i) when the appropriation is made by a local governmental fire agency organized under Title 7,
11 chapter 33, and the appropriation is used only for emergency fire protection, emergency fire training, and
12 emergency fire-related operations, which may include enclosed storage;

13 (ii) when a maximum appropriation of 350 gallons a minute or less is used in nonconsumptive
14 geothermal heating or cooling exchange applications, all of the water extracted is returned without delay to the
15 same source aquifer, and the distance between the extraction well and both the nearest existing well and the
16 hydraulically connected surface waters is more than twice the distance between the extraction well and the
17 injection well;

18 (iii) when the appropriation is outside a stream depletion zone, is 35 gallons a minute or less, and does
19 not exceed 10 acre-feet a year, except that a combined appropriation from the same source by two or more
20 wells or developed springs exceeding 10 acre-feet, regardless of the flow rate, requires a permit; or

21 (iv) when the appropriation is within a stream depletion zone, is 20 gallons a minute or less, and does
22 not exceed 2 acre-feet a year, except that a combined appropriation from the same source by two or more wells
23 or developed springs exceeding this limitation requires a permit.

24 (b) (i) Within 60 days of completion of the well or developed spring and appropriation of the ground
25 water for beneficial use, the appropriator shall file a notice of completion with the department on a form
26 provided by the department through its offices. The notice of completion must be accompanied by a \$10
27 processing fee.

28 (ii) Upon receipt of the notice, the department shall review the notice and may, before issuing a

1 certificate of water right, return a defective notice for correction or completion, together with the reasons for
2 returning it. A notice does not lose priority of filing because of defects if the notice is corrected, completed, and
3 refiled with the department within 30 days of notification of defects or within a further time as the department
4 may allow, not to exceed 6 months.

5 (iii) If a notice is not corrected and completed within the time allowed, the priority date of appropriation
6 is the date of refileing a correct and complete notice with the department.

7 (c) A certificate of water right may not be issued until a correct and complete notice has been filed
8 with the department, including proof of landowner notification or a written federal special use authorization as
9 necessary under subsection (1). The original of the certificate must be sent to the appropriator. The department
10 shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date
11 of priority of the right.

12 (d) An appropriation of ground water by means of a well or a developed spring under this section
13 must be measured by a functioning water meter with recording capacity. The appropriator is responsible for
14 maintaining the meter. The department may access the meter at any time to gather data.

15 (4) An appropriator of ground water by means of a well or developed spring first put to beneficial use
16 between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force
17 prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in
18 subsection (3), with the department to perfect the water right. The filing of a claim pursuant to 85-2-221 is
19 sufficient notice of completion under this subsection. The priority date of the appropriation is the date of the
20 filing of a notice, as provided in subsection (3), or the date of the filing of the claim of existing water right.

21 (5) An appropriation under subsection (4) is an existing right, and a permit is not required. However,
22 the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except
23 that for an appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, the department shall
24 issue a certificate of water right. If a certificate is issued under this section, a certificate need not be issued
25 under the adjudication proceedings provided for in 85-2-236.

26 (6) A permit is not required before constructing an impoundment or pit and appropriating water for use
27 by livestock if:

28 (a) the maximum capacity of the impoundment or pit is less than 15 acre-feet;

1 (b) the appropriation is less than 30 acre-feet a year;

2 (c) the appropriation is from an ephemeral stream, an intermittent stream, or another source other
3 than a perennial flowing stream; and

4 (d) the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is
5 owned or under the control of the applicant and that is 40 acres or larger.

6 (7) (a) Within 60 days after constructing an impoundment or pit, the appropriator shall apply for a
7 permit as prescribed by this part. Subject to subsection (7)(b), upon receipt of a correct and complete
8 application for a stock water provisional permit, the department shall automatically issue a provisional permit. If
9 the department determines after a hearing that the rights of other appropriators have been or will be adversely
10 affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make
11 the permit subject to terms, conditions, restrictions, or limitations that it considers necessary to protect the rights
12 of other appropriators. [For purposes of an adverse effects determination under this subsection, the department
13 may not consider adverse effects on any water right identified in a written consent to approval filed pursuant to
14 85-2-311.]

15 (b) If the impoundment or pit is on national forest system lands, an application is not correct and
16 complete under this section until the applicant has submitted proof of any written special use authorization
17 required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion,
18 impoundment, storage, transportation, withdrawal, use, or distribution of water under the permit.

19 (8) A person may also appropriate water without applying for or prior to receiving a permit under rules
20 adopted by the department under 85-2-113.

21 (9) Pursuant to 85-20-1902, the provisions of this section do not apply within the exterior boundaries
22 of the Flathead Indian reservation. (Bracketed language in subsection (7)(a) terminates September 30, 2023--
23 sec. 8, Ch. 243, L. 2017.)"

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