

SENATE BILL NO. 178

INTRODUCED BY B. USHER, S. VINTON

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR TEMPORARY LEASES OF A WATER RIGHT; REVISING A DEFINITION; EXTENDING RULEMAKING AUTHORITY; ~~AND~~ AMENDING SECTIONS 85-2-102 AND 85-2-404, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

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

NEW SECTION. Section 1. Temporary lease of appropriation right -- notice. (1) Applications to temporarily lease an appropriation right that comply with the requirements of this section are not subject to the provisions of 85-2-402, 85-2-407, 85-2-408, 85-2-410, or 85-2-436. After obtaining approval pursuant to this section, an appropriator may temporarily lease an appropriation right.

(2) The amount of water leased may not exceed the total consumptive use of the appropriation right. For an irrigation right, the consumptive volume may not exceed 2 acre-feet per acre irrigated.

(3) (a) Each appropriation right leased pursuant to this section:

(i) must have been in use within 5 years prior to the application date;

(ii) may be leased only during the period of diversion for the appropriation right;

(iii) may not be leased for more than 5 years one time during any consecutive 10-year period; ~~and~~

(iv) may not be leased for more than ~~20-40~~ days a year; and

(v) may only be leased for a beneficial use as defined in 85-2-102.

(b) The volume and flow rate of water leased may not exceed ~~2,000 acre-feet a year~~ the appropriator's original water appropriation right.

(c) The point of diversion for the appropriation right may not be changed.

(4) ~~An~~ The portion of the original water appropriation right that has been leased may not be used on the place of use associated with ~~a leased~~ the original water appropriation right during the term of the lease.

(5) Storage may be temporarily added ~~to the leased appropriation right at the point of diversion of the original place of use~~ during the term of the leased appropriation right if the water is diverted at the original

point of diversion and subsequently put to a beneficial use.

(6) This section does not apply to change in an appropriation right that would result in leased water being transported outside Montana. Proposed out-of-state uses are subject to the provisions of 85-2-402.

(7) Water leased pursuant to this section must be measured at the point of diversion by a meter approved by the department. The appropriator shall report the amount of water measured at the end of the year in which the lease occurred or upon request of the department.

(8) An applicant proposing to lease an appropriation right pursuant to this section shall submit an application on a form provided by the department and a fee as established by rule. The application must include:

- (a) the name and address of each lessee;
- (b) the names of all owners of each appropriation right;
- (c) the number of each appropriation right;
- (d) the proposed use and the place of use for the leased water;
- (e) the source of water to be appropriated;
- (f) the start and end dates of the proposed lease;
- (g) the flow rate of the proposed diversion and the volume of water to be used during the lease;
- (h) evidence that the appropriation right has been used within the last 5 years; ~~and~~
- (i) an analysis a statement of potential adverse effect and a description of planned actions to mitigate potential adverse effects that, in aggregate, demonstrate no adverse effect; and
- (j) a copy of the executed lease agreement.

(9) ~~The~~ If an application meets the requirements set forth in subsection (8), the department shall approve ~~an the~~ application within 30 days after receipt ~~if the application meets the requirements of this section.~~

(10) ~~The lessee shall provide the department with a copy of the executed lease agreement before the leased water is put to use~~ The department shall provide written notice within 30 days of the approval of the temporary lease of appropriation right by certified mail to each person known from an examination of the department's records to be a water right holder with a diversion on the same source as the temporary lease.

(11) The department may terminate a temporary lease of appropriation right if the applicant violates the terms of the executed lease agreement provided to the department under this section.

~~(11)~~(12) Violations of this section are subject to the provisions of 85-2-114 and 85-2-122. This subsection does not limit the remedies available to an appropriator to enjoin or seek damages from the owner of an appropriation right who leased the water or from a lessee.

~~(12)~~(13) The department shall report annually to the water policy interim committee provided for in 5-5-231 in accordance with 5-11-210. The report must include the number of leases, the amount of water leased, and the number of irrigated acres taken out of production.

~~(13)~~(14) Pursuant to 85-20-1902, the provisions of this section do not apply within the exterior boundaries of the Flathead Indian reservation.

Section 2. 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" or "appropriation" 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) "Appropriation right" has the same meaning as "water right" as defined in this section.