

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

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

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

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

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

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

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

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

1 presumption of abandonment.

2 (4) If an appropriator ceases to use all or part of an appropriation right during a drought, the  
3 reduction in use or the nonuse of the appropriation right does not by itself represent an intent by the  
4 appropriator to wholly or partially abandon the appropriation right or to not comply with the terms and conditions  
5 attached to the appropriation right if:

6 (a) the place of diversion or use is within a county experiencing D1 moderate drought or worse, as  
7 designated by the United States drought monitor; or

8 (b) the reduction in use or the nonuse is made in compliance with a local, regional, or state  
9 drought plan that identifies a metric or criterion that compels the voluntary reduction or cessation of water  
10 diversions in a geographic area or for water rights included in the drought plan.

11 (4)(5) The lease of an existing right pursuant to 85-2-436 or a temporary change in appropriation right  
12 pursuant to 85-2-407 or 85-2-408 does not constitute an abandonment or serve as evidence that could be used  
13 to establish an abandonment of any part of the right.

14 (5)(6) Subsections (1) and (2) do not apply to existing rights until they have been finally determined in  
15 accordance with part 2 of this chapter."

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