

HOUSE BILL NO. 580

INTRODUCED BY J. SECKINGER, W. GALT, S. NOVAK, E. ALBUS, D. HARVEY, G. LAMMERS, D. LOGE,
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A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING WATER RIGHT ABANDONMENT LAWS TO
ADDRESS A REDUCTION IN USE OR THE NONUSE OF AN APPROPRIATION RIGHT DURING PERIODS
OF DROUGHT; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTION 85-2-404, MCA."

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

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

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

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

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

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

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

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