

HOUSE BILL NO. 519

INTRODUCED BY C. GLIMM

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO EXEMPT APPROPRIATIONS OF
5 WATER; REVISING VOLUME LIMITS FOR EXEMPT APPROPRIATIONS OF WATER; REQUIRING CERTAIN
6 WATER RIGHTS INFORMATION DURING SUBDIVISION REVIEW AND FOR EXEMPT APPROPRIATIONS
7 OF WATER; PROVIDING ENFORCEMENT MEASURES FOR VIOLATIONS OF LAWS RELATED TO EXEMPT
8 APPROPRIATIONS OF WATER; REQUIRING WATER RIGHTS INFORMATION DURING SANITATION IN
9 SUBDIVISION REVIEW; REQUIRING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO ADOPT
10 RULES REQUIRING WATER RIGHTS DOCUMENTATION; REQUIRING WATER RIGHTS INFORMATION
11 DURING REVIEW OF SUBDIVISION APPLICATION; ELIMINATING PROHIBITION OF METERING A WATER
12 WELL; REVISING CONTROL PROVISIONS FOR A CONTROLLED GROUNDWATER AREA; AMENDING
13 SECTIONS 76-4-104, 76-4-125, 85-2-113, 85-2-306, AND 85-2-506, MCA; AND PROVIDING AN IMMEDIATE
14 EFFECTIVE DATE."

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17
18 **Section 1.** Section 76-4-104, MCA, is amended to read:
19 **"76-4-104. Rules for administration and enforcement.** (1) The department shall, subject to the
20 provisions of 76-4-135, adopt reasonable rules, including adoption of sanitary standards, necessary for
21 administration and enforcement of this part.

22 (2) The rules and standards must provide the basis for approving subdivisions for various types of public
23 and private water supplies, sewage disposal facilities, storm water drainage ways, and solid waste disposal. The
24 rules and standards must be related to:

- 25 (a) size of lots;
- 26 (b) contour of land;
- 27 (c) porosity of soil;
- 28 (d) ground water level;
- 29 (e) distance from lakes, streams, and wells;
- 30 (f) type and construction of private water and sewage facilities; and

1 (g) other factors affecting public health and the quality of water for uses relating to agriculture, industry,
2 recreation, and wildlife.

3 (3) (a) Except as provided in subsection (3)(b), the rules must provide for the review of subdivisions by
4 a local department or board of health, as described in Title 50, chapter 2, part 1, if the local department or board
5 of health employs a registered sanitarian or a registered professional engineer and if the department certifies
6 under subsection (4) that the local department or board is competent to conduct the review.

7 (b) (i) Except as provided in 75-6-121 and subsection (3)(b)(ii) of this section, a local department or
8 board of health may not review public water supply systems, public sewage systems, or extensions of or
9 connections to these systems.

10 (ii) A local department or board of health may be certified to review subdivisions proposed to connect to
11 existing municipal water and wastewater systems previously approved by the department if no extension of the
12 systems is required.

13 (4) The department shall also adopt standards and procedures for certification and maintaining
14 certification to ensure that a local department or board of health is competent to review the subdivisions as
15 described in subsection (3).

16 (5) The department shall review those subdivisions described in subsection (3) if:

17 (a) a proposed subdivision lies within more than one jurisdictional area and the respective governing
18 bodies are in disagreement concerning approval of or conditions to be imposed on the proposed subdivision; or

19 (b) the local department or board of health elects not to be certified.

20 (6) The rules must further provide for:

21 (a) providing the reviewing authority with a copy of the plat or certificate of survey subject to review under
22 this part and other documentation showing the layout or plan of development, including:

23 (i) total development area; and

24 (ii) total number of proposed dwelling units and structures requiring facilities for water supply or sewage
25 disposal;

26 (b) adequate evidence that a water supply that is sufficient in terms of quality, quantity, and dependability
27 will be available to ensure an adequate supply of water for the type of subdivision proposed; including
28 documentation from the department of natural resources and conservation acquired by the applicant showing that
29 the water supply qualifies for an exception from water rights permitting requirements pursuant to 85-2-306 or that
30 the applicant has a water right for the proposed use. The documentation is not required for connections to existing

1 public water supply systems regulated in accordance with Title 75, chapter 6.

2 (c) evidence concerning the potability of the proposed water supply for the subdivision;

3 (d) adequate evidence that a sewage disposal facility is sufficient in terms of capacity and dependability;

4 (e) standards and technical procedures applicable to storm drainage plans and related designs, in order
5 to ensure proper drainage ways;

6 (f) standards and technical procedures applicable to sanitary sewer plans and designs, including soil
7 testing and site design standards for on-lot sewage disposal systems when applicable;

8 (g) standards and technical procedures applicable to water systems;

9 (h) standards and technical procedures applicable to solid waste disposal;

10 (i) adequate evidence that a proposed drainfield mixing zone and a proposed well isolation zone are
11 located wholly within the boundaries of the proposed subdivision where the drainfield or well is located or that
12 an easement or, for public land, other authorization has been obtained from the landowner to place the proposed
13 drainfield mixing zone or well isolation zone outside the boundaries of the proposed subdivision where the
14 drainfield or well is located. A mixing zone may extend outside the boundaries of the proposed subdivision onto
15 adjoining land that is dedicated for use as a right-of-way for roads, railroads, or utilities. This subsection (6)(i)
16 does not apply to the divisions provided for in 76-3-207 except those under 76-3-207(1)(b).

17 (j) criteria for granting waivers and deviations from the standards and technical procedures adopted
18 under subsections (6)(e) through (6)(i);

19 (k) evidence to establish that, if a public water supply system or a public sewage system is proposed,
20 provision has been made for the system and, if other methods of water supply or sewage disposal are proposed,
21 evidence that the systems will comply with state and local laws and regulations that are in effect at the time of
22 submission of the preliminary or final plan or plat. Evidence that the systems will comply with local laws and
23 regulations must be in the form of a certification from the local health department as provided by department rule.

24 (l) evidence to demonstrate that appropriate easements, covenants, agreements, and management
25 entities have been established to ensure the protection of human health and state waters and to ensure the
26 long-term operation and maintenance of water supply, storm water drainage, and sewage disposal facilities.

27 (7) If the reviewing authority is a local department or board of health, it shall notify the department of its
28 recommendation for approval or disapproval of the subdivision not later than 45 days from its receipt of the
29 subdivision application. The department shall make a final decision on the subdivision within 10 days after
30 receiving the recommendation of the local reviewing authority, but not later than 55 days after the submission of

1 a complete application, as provided in 76-4-125.

2 (8) Review and certification or denial of certification that a division of land is not subject to sanitary
3 restrictions under this part may occur only under those rules in effect when a complete application is submitted
4 to the reviewing authority, except that in cases in which current rules would preclude the use for which the lot was
5 originally intended, the applicable requirements in effect at the time the lot was recorded must be applied. In the
6 absence of specific requirements, minimum standards necessary to protect public health and water quality apply.

7 (9) The reviewing authority may not deny or condition a certificate of subdivision approval under this part
8 unless it provides a written statement to the applicant detailing the circumstances of the denial or condition
9 imposition. The statement must include:

10 (a) the reason for the denial or condition imposition;

11 (b) the evidence that justifies the denial or condition imposition; and

12 (c) information regarding the appeal process for the denial or condition imposition.

13 (10) The department may adopt rules that provide technical details and clarification regarding the water
14 and sanitation information required to be submitted under 76-3-622."

15

16 **Section 2.** Section 76-4-125, MCA, is amended to read:

17 **"76-4-125. Review of subdivision application -- land divisions excluded from review.** (1) Except
18 as provided in subsection (2), an application for review of a subdivision must be submitted to the reviewing
19 authority. The review by the reviewing authority must be as follows:

20 (a) At any time after the developer has submitted an application under the Montana Subdivision and
21 Platting Act, the developer shall present a subdivision application to the reviewing authority. The application must
22 include preliminary plans and specifications for the proposed development, whatever information the developer
23 feels necessary for its subsequent review, any public comments or summaries of public comments collected as
24 provided in 76-3-604(7), water right information for the water supply, and information required by the reviewing
25 authority. Subdivision fees assessed by the reviewing authority must accompany the application. If the proposed
26 development includes onsite sewage disposal facilities, the developer shall notify the designated agent of the
27 local board of health prior to presenting the subdivision application to the reviewing authority. The agent may
28 conduct a preliminary site assessment to determine whether the site meets applicable state and local
29 requirements.

30 (b) Within 5 working days after receipt of an application that is not subject to review by a local reviewing

1 authority under 76-4-104, the department shall provide a written notice for informational purposes to the applicant
2 if the application does not include a copy of the certification from the local health department required by
3 76-4-104(6)(k) or, if applicable, contain an approval from the local governing body under Title 76, chapter 3,
4 together with any public comments or summaries of public comments collected as provided in 76-3-604(7)(a).

5 (c) If the reviewing authority denies an application and the applicant resubmits a corrected application
6 within 30 days after the date of the denial letter, the reviewing authority shall complete review of the resubmitted
7 application within 30 days after receipt of the resubmitted application. If the review of the resubmitted application
8 is conducted by a local department or board of health that is certified under 76-4-104, the department shall make
9 a final decision on the application within 10 days after the local reviewing authority completes its review.

10 (d) Except as provided in 75-1-205(4) and 75-1-208(4)(b), the department shall make a final decision
11 on the proposed subdivision within 55 days after the submission of a complete application and payment of fees
12 to the reviewing authority unless an environmental impact statement is required, at which time this deadline may
13 be increased to 120 days. The reviewing authority may not request additional information for the purpose of
14 extending the time allowed for a review and final decision on the proposed subdivision. If the department
15 approves the subdivision, the department shall issue a certificate of subdivision approval indicating that it has
16 approved the plans and specifications and that the subdivision is not subject to a sanitary restriction.

17 (2) A subdivision excluded from the provisions of chapter 3 must be submitted for review according to
18 the provisions of this part, except that the following divisions or parcels, unless the exclusions are used to evade
19 the provisions of this part, are not subject to review:

20 (a) the exclusion cited in 76-3-201;

21 (b) divisions made for the purpose of acquiring additional land to become part of an approved parcel,
22 provided that water or sewage disposal facilities may not be constructed on the additional acquired parcel and
23 that the division does not fall within a previously platted or approved subdivision;

24 (c) divisions made for purposes other than the construction of water supply or sewage and solid waste
25 disposal facilities as the department specifies by rule;

26 (d) divisions located within jurisdictional areas that have adopted growth policies pursuant to chapter 1
27 or within first-class or second-class municipalities for which the governing body certifies, pursuant to 76-4-127,
28 that adequate storm water drainage and adequate municipal facilities will be provided; and

29 (e) subject to the provisions of subsection (3), a remainder of an original tract created by segregating
30 a parcel from the tract for purposes of transfer if:

1 (i) the remainder is served by a public or multiple-user sewage system approved before January 1, 1997,
2 pursuant to local regulations or this chapter; or

3 (ii) the remainder is 1 acre or larger and has an individual sewage system serving a discharge source
4 that was in existence prior to April 29, 1993, and, if required when installed, the system was approved pursuant
5 to local regulations or this chapter.

6 (3) Consistent with the applicable provisions of 50-2-116, a local health officer may require that, prior
7 to the filing of a plat or a certificate of survey subject to review under this part for the parcel to be segregated from
8 the remainder referenced in subsection (2)(e)(ii), the remainder include acreage or features sufficient to
9 accommodate a replacement drainfield."
10

11 **Section 3.** Section 85-2-113, MCA, is amended to read:

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

18 (2) The department may adopt rules necessary to implement and carry out the purposes and provisions
19 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 under
21 this chapter to begin appropriating water immediately, pending final approval or denial by the department of the
22 application for a regular permit;

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

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

1 (3) The department shall adopt rules providing for and governing temporary emergency appropriations,
2 without prior application for a permit, necessary to protect lives or property.

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

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

12

13 **Section 4.** Section 85-2-306, MCA, is amended to read:

14 **"85-2-306. Exceptions to permit requirements.** (1) (a) Except as provided in subsection (1)(b), ground
15 water may be appropriated only by a person who has a possessory interest in the property where the water is
16 to be put to beneficial use and exclusive property rights in the ground water development works.

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

22 (c) If the person does not have a possessory interest in the real property from which the ground water
23 may be appropriated, the person shall provide to the owner of the real property written notification of the works
24 and the person's intent to appropriate ground water from the works. The written notification must be provided to
25 the landowner at least 30 days prior to constructing any associated works or, if no new or expanded works are
26 proposed, 30 days prior to appropriating the water. The written notification under this subsection is a notice
27 requirement only and does not create an easement in or over the real property where the ground water
28 development works are located.

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

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

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

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

4 (i) when the appropriation is made by a local governmental fire agency organized under Title 7, chapter
5 33, and the appropriation is used only for emergency fire protection, which may include enclosed storage;

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

10 (iii) when the appropriation is outside a stream depletion zone, is 35 GALLONS A MINUTE OR LESS, ~~is 35~~
11 ~~gallons a minute or less, and;~~

12 ~~(A) does not exceed 10 7.5 acre-feet a year, except that a combined appropriation from the same source~~
13 ~~by two or more wells or developed springs exceeding 10 acre-feet, regardless of the flow rate, requires a permit~~
14 ~~and 0.5 0.375 acre-foot a year for every additional acre over 20 acres within a subdivision as defined in 76-4-102;~~

15 or

16 ~~(B) does not exceed 10 acre-feet a year and 0.25 acre-foot a year for every additional acre over 40 acres~~
17 ~~on a tract of record outside a subdivision as THE TERM IS defined in 76-4-102-; OR~~

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

21 ~~(b) For an appropriation under subsections (3)(a)(iii)(A) and (3)(a)(iii)(B), one or more wells or developed~~
22 ~~springs may be used in combination without a permit if the appropriation limit is not exceeded. SUBSECTION~~
23 ~~(3)(A)(III):~~

24 ~~(I) ONE OR MORE WELLS OR DEVELOPED SPRINGS THAT EXCEED THE LIMITS PROVIDED IN SUBSECTION (3)(A)(III)~~
25 ~~REQUIRE A PERMIT;~~

26 ~~(II) ANY SUBSEQUENT SUBDIVISION AS DEFINED IN 76-4-102 OF A SUBDIVISION LOT MAY NOT RECEIVE AN~~
27 ~~ADDITIONAL APPROPRIATION PURSUANT TO THIS SECTION;~~

28 ~~(III) AN APPROPRIATION ON A TRACT OF RECORD THAT IS NOT PART OF A SUBDIVISION AS DEFINED IN 76-4-102~~
29 ~~MAY NOT EXCEED 7.5 ACRE-FEET A YEAR ON ANY 20 ACRES; AND~~

30 ~~(IV) MORE THAN ONE APPROPRIATION MAY NOT BE PHYSICALLY CONNECTED IF THE TOTAL VOLUME WILL EXCEED~~

1 7.5 ACRE-FEET A YEAR.

2 (C) FOR AN APPROPRIATION UNDER SUBSECTION (3)(A)(III), 0.21 ACRE-FOOT A YEAR FOR EACH DWELLING UNIT
 3 IS EXEMPTED FROM THE APPROPRIATION LIMITS IN THIS SECTION UNLESS THE DWELLING UNIT IS SERVED BY A PUBLIC
 4 SEWAGE SYSTEM, AS DEFINED IN 75-6-102, THAT IS LOCATED OUTSIDE THE EXTERIOR PROPERTY LINE OF THE
 5 SUBDIVISION.

6 ~~(b)(c)(D)~~ (i) Within 60 days of completion of the well or developed spring and appropriation of the ground
 7 water for beneficial use, the appropriator shall file a notice of completion with the department on a form provided
 8 by the department through its offices.

9 (ii) Upon receipt of the notice, the department shall review the notice and may, before issuing a certificate
 10 of water right, return a defective notice for correction or completion, together with the reasons for returning it. A
 11 notice does not lose priority of filing because of defects if the notice is corrected, completed, and refiled with the
 12 department within 30 days of notification of defects or within a further time as the department may allow, not to
 13 exceed 6 months.

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

16 ~~(c)(d)(E)~~ (I) A certificate of water right may not be issued until a correct and complete notice has been
 17 filed with the department, including proof of landowner notification or a written federal special use authorization
 18 as necessary under subsection (1). The department may issue a certificate of water right subject to terms,
 19 conditions, restrictions, and limitations considered necessary to satisfy the requirements of subsection (3)(a). If
 20 applicable, the terms, conditions, restrictions, and limitations must be generally consistent with any documentation
 21 provided by the department for any associated subdivision water supply plan pursuant to Title 76, chapter 4. The
 22 original of the certificate must be sent to the appropriator. The department shall keep a copy of the certificate in
 23 its office in Helena. The date of filing of the notice of completion is the date of priority of the right.

24 (II) AT THE REQUEST OF AN APPROPRIATOR, THE DEPARTMENT SHALL REISSUE A CERTIFICATE OF WATER RIGHT
 25 ISSUED PURSUANT TO SUBSECTION (3)(E)(I) TO A VOLUME LESS THAN THE VOLUME ALLOWED ON THE ORIGINAL
 26 CERTIFICATE OF WATER RIGHT TO ACCOMMODATE A FUTURE APPROPRIATION SUBJECT TO SUBSECTION (3)(A)(III).

27 (III) THE DEPARTMENT SHALL ADOPT RULES TO ADDRESS VIOLATIONS OF CONDITIONS PROVIDED IN SUBSECTION
 28 (3)(E)(I) OR ANY APPROPRIATION EXCEEDING THE EXCEPTION PROVIDED IN SUBSECTION (3)(A)(III). THE RULES MUST
 29 INCLUDE BUT ARE NOT LIMITED TO:

30 (A) PROVISIONS FOR NOTICE OF VIOLATION;

1 (B) PROVISIONS AND TIMELINES FOR ACHIEVING COMPLIANCE AFTER A VIOLATION; AND

2 (C) PROVISIONS FOR THE TERMINATION OF AN APPROPRIATOR'S CERTIFICATE OF WATER RIGHT AND A
 3 SUBSEQUENT APPLICATION PROCESS FOR AN APPROPRIATION PERMIT PURSUANT TO 85-2-311 FOR CONTINUED USE OF
 4 A GROUND WATER WELL OR DEVELOPED SPRING.

5 ~~(e)(F) To satisfy~~ FOR THE PURPOSES OF SATISFYING the requirements of subsection (3)(a), the department
 6 shall use the following standards ~~when reviewing a subdivision water supply plan pursuant to Title 76, chapter~~
 7 ~~4:~~

8 (i) for domestic use, for one household, 0.21 acre-foot of water a year for year-round use; and

9 (ii) for lawns, gardens, shrubbery, and shelterbelts, 2.0 acre-feet of water per acre per year.

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

16 (5) An appropriation under subsection (4) is an existing right, and a permit is not required. However, the
 17 department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that
 18 for an appropriation of ~~35 gallons a minute or less, not to exceed 10 acre-feet a year,~~ pursuant to subsection (3)
 19 the department shall issue a certificate of water right. If a certificate is issued under this section, a certificate need
 20 not be issued under the adjudication proceedings provided for in 85-2-236.

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

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

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

25 (c) the appropriation is from a source other than a perennial flowing stream; and

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

28 (7) (a) Within 60 days after constructing an impoundment or pit, the appropriator shall apply for a permit
 29 as prescribed by this part. Subject to subsection (7)(b), upon receipt of a correct and complete application for a
 30 stock water provisional permit, the department shall automatically issue a provisional permit. If the department

1 determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may
2 revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit
3 subject to terms, conditions, restrictions, or limitations that it considers necessary to protect the rights of other
4 appropriators.

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

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

11

12 **Section 5.** Section 85-2-506, MCA, is amended to read:

13 **"85-2-506. Controlled ground water areas -- designation or modification.** (1) The department may
14 by rule designate or modify permanent or temporary controlled ground water areas as provided in this part. The
15 rule for each controlled ground water area must designate the boundaries of the controlled ground water area.

16 (2) The rulemaking process for designation or modification of a controlled ground water area may be
17 initiated by:

18 (a) the department;

19 (b) submission of a correct and complete petition from a state or local public health agency for identified
20 public health risks; or

21 (c) submission of a correct and complete petition:

22 (i) by a municipality, county, conservation district, or local water quality district formed under Title 7,
23 chapter 13, part 45; or

24 (ii) signed by at least one-third of the water right holders in a proposed controlled ground water area.

25 (3) (a) A correct and complete petition must:

26 (i) be in a form prescribed by the department and must contain analysis prepared by a hydrogeologist,
27 a qualified scientist, or a qualified licensed professional engineer concluding that one or more of the criteria
28 provided in subsection (5) are met; and

29 (ii) describe proposed measures, if any, to mitigate effects of the criteria identified in subsection (5) that
30 are alleged in the petition.

- 1 (b) When the department proposes a rule pursuant to this section, the place for the hearing must be
2 within or as close as practical to the proposed or existing controlled ground water area.
- 3 (c) (i) The department shall notify the petitioner of any defects in a petition within 180 days. If the
4 department does not notify the petitioner of any defects within 180 days, the petition must be treated as correct
5 and complete.
- 6 (ii) A petition that is not made correct and complete within 90 days from the date of notification by the
7 department of any defect is terminated.
- 8 (4) (a) Within 60 days after a petition is determined to be correct and complete, the department shall:
- 9 (i) deny in writing the petition in whole or in part, stating the reasons for denial;
- 10 (ii) inform the petitioner that the department will study the information presented in the petition for a period
11 not to exceed 90 days before denying or proceeding with the petition; or
- 12 (iii) initiate rulemaking proceedings in accordance with Title 2, chapter 4, part 3.
- 13 (b) Failure of the department to act under subsection (4)(a) does not mandate that the department grant
14 the petition for rulemaking.
- 15 (c) In addition to the notice requirements of Title 2, chapter 4, parts 1 through 4, the department shall
16 provide public notice of the rulemaking hearing by:
- 17 (i) publishing a notice at least once each week for 3 successive weeks, with the first notice not less than
18 30 days before the date of the hearing in a newspaper of general circulation in the county or counties in which
19 the proposed controlled ground water area is located;
- 20 (ii) serving by mail a copy of the notice, not less than 30 days before the hearing, upon each person or
21 public agency known from an examination of the records of the department to be a water right holder with a
22 diversion within the proposed controlled ground water area, all landowners of record within the proposed
23 controlled ground water area, and each well driller licensed in Montana whose address is within any county in
24 which any part of the proposed controlled ground water area is located; and
- 25 (iii) serving by mail a copy of the notice upon any other person or state or federal agency that the
26 department feels may be interested in or affected by the proposed designation or modification of a controlled
27 ground water area.
- 28 (d) The notice under subsection (4)(c) must include a summary of the basis for the proposed rule.
29 Publication and mailing of the notice as prescribed in this section, when completed, is considered to be sufficient
30 notice of the hearing to all interested persons.

1 (5) The department may designate a permanent controlled ground water area by rule if it finds by a
2 preponderance of the evidence that any of the following criteria have been met and cannot be appropriately
3 mitigated:

4 (a) current or projected reductions of recharge to the aquifer or aquifers in the proposed controlled
5 ground water area will cause ground water levels to decline to the extent that water right holders cannot
6 reasonably exercise their water rights;

7 (b) current or projected ground water withdrawals from the aquifer or aquifers in the proposed controlled
8 ground water area have reduced or will reduce ground water levels or surface water availability necessary for
9 water right holders to reasonably exercise their water rights;

10 (c) current or projected ground water withdrawals from the aquifer or aquifers in the proposed controlled
11 ground water area have induced or altered or will induce or alter contaminant migration exceeding relevant water
12 quality standards;

13 (d) current or projected ground water withdrawals from the aquifer or aquifers in the proposed controlled
14 ground water area have impaired or will impair ground water quality necessary for water right holders to
15 reasonably exercise their water rights based on relevant water quality standards;

16 (e) ground water within the proposed controlled ground water area is not suited for beneficial use; or

17 (f) public health, safety, or welfare is or will become at risk.

18 (6) (a) If the department finds that sufficient facts are not available to designate a permanent controlled
19 ground water area, it may designate by rule a temporary controlled ground water area to allow studies to obtain
20 the facts needed to determine whether or not it is appropriate to designate a permanent controlled ground water
21 area. The department shall set the length of time that the temporary controlled ground water area will be in effect.
22 Subject to subsection (6)(c), the term of a temporary controlled ground water area may be extended by rule.

23 (b) A temporary controlled ground water area designation is for the purpose of study and cannot include
24 the control provisions provided in subsection (7), other than measurement, water quality testing, and reporting
25 requirements.

26 (c) A temporary controlled ground water area designation may not exceed a total of 6 years, including
27 any extensions.

28 (d) Prior to expiration of a temporary controlled ground water area, the department may amend or repeal
29 the rule establishing the temporary controlled ground water area or may designate a permanent controlled ground
30 water area through the rulemaking process under this section.

1 (e) Studies for temporary controlled ground water areas may be considered for funding under the
2 renewable resource grant and loan program in Title 85, chapter 1, part 6.

3 (f) If there is a ground water investigation program within the bureau, the ground water assessment
4 steering committee established by 2-15-1523 shall consider temporary controlled ground water areas for study.

5 (7) A controlled ground water area may include but is not limited to the following control provisions:

6 (a) a provision closing the controlled ground water area to further appropriation of ground water;

7 (b) a provision restricting the development of future ground water appropriations in the controlled ground
8 water area by flow, volume, purpose, aquifer, depth, water temperature, water quality, density, or other criteria
9 that the department determines necessary;

10 (c) a provision modifying flow and volume exceptions established in 85-2-306, assuming IF water is
11 legally and physically available AND OTHER APPROPRIATORS WILL NOT BE ADVERSELY AFFECTED;

12 ~~(e)~~(d) a provision requiring measurement of future ground water or surface water appropriations;

13 ~~(d)~~(e) a provision requiring the filing of notice on land records within the boundary of a permanent
14 controlled ground water area to inform prospective holders of an interest in the property of the existence of a
15 permanent controlled ground water area. Notice of the designation must be removed or modified as necessary
16 to accurately reflect modification or repeal of a permanent designation within 60 days.

17 ~~(e)~~(f) a provision for well spacing requirements, well construction constraints, and prior department
18 approval before well drilling, unless the well is regulated pursuant to Title 82, chapter 11;

19 ~~(f)~~(g) a provision for mitigation of ground water withdrawals;

20 ~~(g)~~(h) a provision for water quality testing;

21 ~~(h)~~(i) a provision for data reporting to the department; and

22 ~~(i)~~(j) other control provisions that the department determines are appropriate and adopts through
23 rulemaking."

24
25 NEW SECTION. Section 6. Saving clause. [This act] does not affect rights and duties that matured,
26 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

27
28 NEW SECTION. Section 7. Effective date. [This act] is effective on passage and approval.

29 - END -