

SENATE BILL NO. 389

INTRODUCED BY B. HAMLETT, P. CONNELL, S. STEWART-PEREGOY

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING DEFINITIONS FOR "EPHEMERAL STREAM" AND "INTERMITTENT STREAM"; AMENDING THE DEFINITION OF "PERENNIAL FLOWING STREAM"; CLARIFYING THAT A WATER RIGHTS PERMIT IS NOT NEEDED FOR CONSTRUCTING A STOCK POND WITH AN APPROPRIATION FROM AN EPHEMERAL OR INTERMITTENT STREAM; AND AMENDING SECTIONS 85-2-306 AND 85-2-355, MCA."

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

**Section 1.** Section 85-2-306, MCA, is amended to read:

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

30 (4) An appropriator of ground water by means of a well or developed spring first put to beneficial use

1 between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force  
2 prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in  
3 subsection (3), with the department to perfect the water right. The filing of a claim pursuant to 85-2-221 is  
4 sufficient notice of completion under this subsection. The priority date of the appropriation is the date of the filing  
5 of a notice, as provided in subsection (3), or the date of the filing of the claim of existing water right.

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

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

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

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

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

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

19 (7) (a) Within 60 days after constructing an impoundment or pit, the appropriator shall apply for a permit  
20 as prescribed by this part. Subject to subsection (7)(b), upon receipt of a correct and complete application for a  
21 stock water provisional permit, the department shall automatically issue a provisional permit. If the department  
22 determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may  
23 revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit  
24 subject to terms, conditions, restrictions, or limitations that it considers necessary to protect the rights of other  
25 appropriators.

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

30 (8) A person may also appropriate water without applying for or prior to receiving a permit under rules

1 adopted by the department under 85-2-113."

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3 **Section 2.** Section 85-2-355, MCA, is amended to read:

4 **"85-2-355. ~~Definition~~ Definitions.** As used in ~~this part~~ 85-2-306, the following definitions apply:

5 (1) "Ephemeral stream" means a watercourse that may or may not have a channel and that carries water  
6 only during and shortly after precipitation or snow melt events.

7 (2) "Intermittent stream" means a watercourse that has a channel and that PERIODICALLY carries water  
8 TYPICALLY FROM LATE FALL THROUGH SPRING but is dry throughout FOR a significant portion of its length for part of  
9 the year.

10 (3) ~~perennial~~ Perennial flowing stream" means a stream that ~~historically has flowed~~ FLOWS continuously  
11 during all seasons of the year, during ~~dry as well as wet~~ MOST DRY AS WELL AS WET years."

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