

Unofficial Draft Copy

As of: August 25, 2008 (2:26pm)

LC5021

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act generally revising water enforcement laws; allowing for the limited appointment of water masters as special masters in district court proceedings; requiring that protection of prior appropriators be given priority in judicial enforcement considerations; making the pursuit of voluntary compliance optional; establishing a water right enforcement program and a water right enforcement account; and; amending sections 3-7-311, 17-7-502, 85-2-114, and 85-2-122, MCA."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-7-311, MCA, is amended to read:

"3-7-311. Duties of water masters. (1) The water master has the general powers given to a master by Rule 53(c), M.R.Civ.P.

(2) Within a reasonable time after June 30, 1983, the water master shall issue a report to the water judge meeting the requirements for the preliminary decree as specified in 85-2-231.

(3) After a water judge issues a preliminary decree, the water master shall assist the water judge in the performance of the water division's further duties as ordered by the water judge.

(4) A water master may be appointed by a district court to

serve as a special master to a district court for actions brought pursuant to 85-2-114 (1) and (3) and 85-5-301 provided that:

(a) the water master appointed has not been involved with adjudication proceedings in the area where the action is brought; and (WATER COURT ALTERNATIVE: is not currently involved with adjudication proceedings on the stream where the action is brought)

(b) the appointment is approved by the chief water judge."

{Internal References to 3-7-311: None.}

Section 2. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310;

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10-3-312; 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-23-706;
15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121;
15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-212;
17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319;
19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512;
19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107;
20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-4-202;
23-4-204; 23-4-302; 23-4-304; 23-5-306; 23-5-409; 23-5-612;
23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011;
42-2-105; 44-1-504; 44-12-206; 44-13-102; 50-4-623; 53-1-109;
53-6-703; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870;
75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-13-150; 77-1-108;
77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161;
87-1-513; 90-1-115; 90-1-205; 90-3-1003; ~~and~~ 90-9-306; and
[section 5].

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's

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unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; pursuant to sec. 17, Ch. 593, L. 2005, the inclusion of 15-31-906 terminates January 1, 2010; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; and pursuant to sec. 6, Ch. 2, Sp. L. September 2007, the inclusion of 76-13-150 terminates June 30, 2009.)"

{ *Internal References to 17-7-502:*

2-17-105	5-11-120	5-11-407	5-13-403
7-4-2502	10-1-1202	10-1-1303	10-2-603
10-3-203	10-3-310	10-3-312	10-3-312
10-3-314	10-4-301	15-1-121	15-1-218
15-23-706	15-31-906	15-35-108	15-36-332
15-37-117	15-39-110	15-65-121	15-70-101
15-70-369	15-70-601	16-11-509	17-1-508
17-3-106	17-3-212	17-3-222	17-3-241
17-6-101	17-7-304	17-7-501	18-11-112
19-3-319	19-6-404	19-6-410	19-9-702
19-13-604	19-17-301	19-18-512	19-19-305
19-19-506	19-20-604	19-20-607	19-21-203
20-8-107	20-9-534	20-9-622	20-26-1503
20-26-1503	22-3-1004	23-4-105	23-4-202
23-4-204	23-4-302	23-4-302	23-4-304
23-5-306	23-5-409	23-5-612	23-7-301
23-7-402	37-43-204	37-51-501	39-71-503
41-5-2011	42-2-105	44-1-504	44-12-206
44-13-102	50-4-623	53-1-109	53-6-703
53-24-108	53-24-108	53-24-206	60-11-115
61-3-415	69-3-870	75-1-1101	75-1-1101
75-5-1108	75-6-214	75-10-622	75-11-313
76-13-150	77-1-108	77-2-362	80-2-222
80-4-416	80-5-510	80-11-518	82-11-161
87-1-513	90-1-115	90-1-115	90-1-205
90-3-1003	90-9-306 }		

Section 3. Section 85-2-114, MCA, is amended to read:

"85-2-114. Judicial enforcement. (1) If the department ascertains, by a means reasonably considered sufficient by it, that a person is wasting water, using water unlawfully, preventing water from moving to another person having a prior right to use the water, or violating a provision of this chapter, ~~it may, after reasonable attempts have failed to obtain voluntary compliance as provided in subsection (4),~~ petition the district court supervising the distribution of water among appropriators from the source to:

(a) regulate the controlling works of an appropriation as may be necessary to prevent the wasting or unlawful use of water or to secure water to a person having a prior right to its use;

(b) order the person wasting, unlawfully using, or interfering with another's rightful use of the water to cease and desist from doing so and to take steps that may be necessary to remedy the waste, unlawful use, or interference; or

(c) issue a temporary, preliminary, or permanent injunction to prevent a violation of this chapter. Notwithstanding the provisions of Title 27, chapter 19, part 3, a temporary restraining order must be granted if it clearly appears from the specific facts shown by affidavit or by the verified complaint that a provision of this chapter is being violated.

(2) Upon the issuance of an order or injunction, the department may attach to the controlling works a written notice, properly dated and signed, setting forth the fact that the controlling works have been properly regulated by it. The notice constitutes legal notice to all persons interested in the

appropriation or distribution of the water.

(3) The department may also direct its own attorney or request the attorney general or county attorney to bring suit to enjoin the waste, unlawful use, interference, or violation.

(4) The county attorney or the attorney general may prosecute under 85-2-122(1) bring suit to enjoin the waste, unlawful use, interference or violation or bring an action under 85-2-122(2) 85-2-122(1) without being requested to do so by the department. The attorney general and a county attorney are subject to the voluntary compliance provisions of subsection (4).

(5) A county attorney who takes action pursuant to subsections (3) or (4) may request assistance from the attorney general.

(6) When enforcing the provisions of this section, the department, the county attorney, and the attorney general shall give priority to protecting the water rights of a prior appropriator under an existing water right, a certificate, a permit, or a state water reservation.

~~(4)(7)~~ The After considering the provisions of subsection (6), the department shall may attempt to obtain voluntary compliance through warning, conference, or any other appropriate means before petitioning the district court under subsection (1). The attempts An attempt to obtain voluntary compliance under this subsection must extend over a period of at least 7 days and may not exceed 30 working days."

{ Internal References to 85-2-114:
85-2-122 x 85-2-122 x }

Section 4. Section 85-2-122, MCA, is amended to read:

"85-2-122. Penalties. ~~(1) A person who violates or refuses or neglects to comply with the provisions of this chapter, any order of the department, or any rule of the department is guilty of a misdemeanor.~~

~~(2)~~(1) Except as provided in 85-2-410(6), a person who violates or refuses or neglects to comply with the provisions of 85-2-114, any order of the department, or any rule of the department is subject to a civil penalty not to exceed \$1,000 per violation. Each day of violation constitutes a separate violation.

(3) ~~(a)~~ Except as provided in subsection ~~(3)(b)~~ (4), fines collected by the department or a district court under subsection ~~(2)~~ (1) must be deposited in the account established in 85-2-318 for use by the department in the enforcement of 85-2-114.

~~(b)~~(4) If a fine is collected by an independent action brought by:

(a) the county attorney, the fine must be deposited in the general fund of the county.

(b) the county attorney with assistance from the attorney general or by the attorney general, the fine must be deposited in the water right enforcement account created in [section 5] and must be used to enforce the provisions of 85-2-114."

{ Internal References to 85-2-122:

85-2-114 a 85-2-114a 85-2-123 x 85-2-123x
85-20-1001x }

NEW SECTION. **Section 5. Water right enforcement account -- statutory appropriation.** (1) There is a water right enforcement account in the state special revenue fund.

(2) Fines collected pursuant to 85-2-122 (4) (b) must be deposited in the water right enforcement account.

(3) The money in the account is statutorily appropriated, as provided in 17-7-502, to the department of justice to enforce the provisions of 85-2-114.

NEW SECTION. **Section 6. Water right enforcement program.** There is a water right enforcement program in the department of justice. The program staff may enforce the provisions of 85-2-114. The program is under the supervision and control of the attorney general.

NEW SECTION. **Section 7. {standard} Codification instruction.** [Sections 5 and 6] are intended to be codified as an integral part of Title 44, chapter 4, and the provisions of Title 44, chapter 4, apply to [sections 5 and 6].

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