

**Unofficial Draft Copy**

As of: August 24, 2016 (7:29am)

LCwp12

\*\*\*\* Bill No. \*\*\*\*

Introduced By \*\*\*\*\*

By Request of the \*\*\*\*\*

A Bill for an Act entitled: "An Act providing for a Clark Fork River basin watershed advisory committee; amending sections 85-1-203 and 85-2-336, MCA; and repealing sections 85-2-335, 85-2-338 and 85-2-350, MCA."

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

NEW SECTION. **Section 1. Clark Fork River basin watershed advisory committee -- composition -- duties.** (1) There is a Clark Fork River basin watershed advisory committee. The department of natural resources and conservation shall provide staff support to the advisory committee.

(2) The purpose of the advisory committee is to:

(a) provide a forum for all interests to communicate about water issues;

(b) provide education about water law and water management issues;

(c) identify the potential beneficiaries of and a funding mechanism for new and expanded water storage sites;

(d) help facilitate the resolution of water-related disputes;

(e) coordinate with other basin management and planning efforts;

(f) identify short-term and long-term water management issues and problems as well as alternatives for resolving any issues or problems identified;

(g) identify data gaps regarding basin water resources, especially ground water;

(h) coordinate water management by local basin watershed groups, water user organizations, and individual water users to ensure long-term sustainable water use;

(i) advise government agencies about water management and permitting activities in the Clark Fork River basin; and

(j) consult with local and tribal governments within the Clark Fork River basin.

(3) (a) The governor shall appoint the advisory committee. The committee consists of the following 13 members:

(i) three members of conservation districts within the basin;

(ii) three members of county commissions within the basin;

(iii) seven members who must be selected on the basis of their knowledge of water use, water management, fish, wildlife, recreations, water quality, or water conservation.

(b) Representation on the committee must include but is not limited to representatives from:

(i) agriculture;

(ii) departments of state government;

(iii) environmental organizations;

(iv) industries;

(v) local governments;

- (vi) reservation applicants;
- (vii) utilities; and
- (viii) other groups of water users not listed above.

(4) Except as provided in subsection (5), advisory committee members shall serve 4-year terms and may serve more than one term.

(5) Initial term lengths must be staggered as follows:

(a) Conservation district appointees shall initially serve for 4 years.

(b) County commissioner appointees shall initially serve for 2 years.

(c) As determined by the governor, three of the governor's appointees under subsection (3)(a)(iii) shall initially serve for 2 years and the remainder shall initially serve for 4 years.

(6) The committee shall report to:

(a) the department on a regular basis;

(b) the water policy committee established in 5-5-231 annually; and

(c) the appropriations subcommittee that deals with natural resources and commerce each legislative session.

**Section 2.** Section 85-1-203, MCA, is amended to read:

**"85-1-203. State water plan.** (1) The department shall gather from any source reliable information relating to Montana's water resources and prepare from the information a continuing comprehensive inventory of the water resources of the state. In

preparing this inventory, the department may:

- (a) conduct studies;
- (b) adopt studies made by other competent water resource groups, including federal, regional, state, or private agencies;
- (c) perform research or employ other competent agencies to perform research on a contract basis; and
- (d) hold public hearings in affected areas at which all interested parties must be given an opportunity to appear.

(2) The department shall formulate and adopt and amend, extend, or add to a comprehensive, coordinated multiple-use water resources plan known as the "state water plan". The state water plan may be formulated and adopted in sections, with some of these sections corresponding with hydrologic divisions of the state. The state water plan must set out a progressive program for the conservation, development, utilization, and sustainability of the state's water resources and propose the most effective means by which these water resources may be applied for the benefit of the people, with due consideration of alternative uses and combinations of uses.

(3) Sections of the state water plan must be completed for the Missouri, Yellowstone, and Clark Fork River basins, submitted to the 2015 legislature, and updated at least every 20 years. These basinwide plans must include:

- (a) an inventory of consumptive and nonconsumptive uses associated with existing water rights;
- (b) an estimate of the amount of surface and ground water needed to satisfy new future demands;

(c) analysis of the effects of frequent drought and of new or increased depletions on the availability of future water supplies;

(d) proposals for the best means, such as an evaluation of opportunities for storage of water by both private and public entities, to satisfy existing water rights and new water demands;

(e) possible sources of water to meet the needs of the state; and

(f) any legislation necessary to address water resource concerns in these basins.

(4) (a) The department shall create a water user council in both the Yellowstone and Missouri River basins that is inclusive and representative of all water interests and interests in those basins. ~~For the Clark Fork River basin, the department shall continue to utilize the Clark Fork River basin task force established pursuant to 85-2-350.~~

(b) The councils in the Missouri and Yellowstone River basins consist of representatives of existing watershed groups or councils within the basins.

(c) Each council may have up to 20 members.

(d) Each water user council shall make recommendations to the department on the basinwide plans required by subsection (3).

(5) Before adopting the state water plan or any section of the plan, the department shall hold public hearings in the state or in an area of the state encompassed by a section of the plan if adoption of a section is proposed. Notice of the hearing or hearings must be published for 2 consecutive weeks in a newspaper

of general county circulation in each county encompassed by the proposed plan or section of the plan at least 30 days prior to the hearing.

(6) The department shall submit to the water policy committee established in 5-5-231 and to the legislature at the beginning of each regular session the state water plan or any section of the plan or amendments, additions, or revisions to the plan that the department has formulated and adopted.

(7) The legislature, by joint resolution, may revise the state water plan.

(8) The department shall prepare a continuing inventory of the ground water resources of the state. The ground water inventory must be included in the comprehensive water resources inventory described in subsection (1) but must be a separate component of the inventory.

(9) The department shall publish the comprehensive inventory, the state water plan, the ground water inventory, or any part of each, and the department may assess and collect a reasonable charge for these publications.

(10) In developing and revising the state water plan as provided in this section, the department shall consult with the water policy committee established in 5-5-231 and solicit the advice of the water policy committee in carrying out its duties under this section."

{ *Internal References to 85-1-203:*  
x85-2-105      x85-2-350      x85-2-350 }

**Section 3.** Section 85-2-336, MCA, is amended to read:

**"85-2-336. Basin closure -- exception.** (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section, the department may not grant an application for a permit to appropriate water within the Upper Clark Fork River basin.

(2) The provisions of subsection (1) do not apply to:

(a) an application for a permit to appropriate ground water if the applicant complies with the provisions of 85-2-360;

(b) an application for a permit to appropriate surface water to conduct aquatic resource activities carried out in compliance with and as required by the federal Clean Water Act of 1977, 33 U.S.C. 1251 through 1387. A permit issued to conduct aquatic resource actions may not be used for dilution.

(c) an application for a permit to appropriate water for stock use;

(d) an application to store water;

(e) an application submitted pursuant to 85-20-1401, Article VI; or

(f) an application for power generation at existing hydroelectric dams. The department may not approve a permit for power generation if approval results in additional consumption of water.

(3) A change of use authorization for changing the purpose of use may not be issued for any permit issued pursuant to subsection (2) (b) or (2) (c).

(4) Except as provided in 85-20-1401, applications for state water reservations in the Upper Clark Fork River basin

filed pursuant to 85-2-316 and pending as of May 1, 1991, have a priority date of May 1, 1991. The filing of a state water reservation application does not provide standing to object under 85-2-402.

(5) Except as provided in 85-20-1401, the department may not process or approve applications for state water reservations in the Upper Clark Fork River basin filed pursuant to 85-2-316.

(6) For the purposes of this section, the following definitions apply:

(a) "Application" means an application for a beneficial water use permit pursuant to 85-2-302.

(b) "Upper Clark Fork River basin" means the drainage area of the Clark Fork River and the Blackfoot River and their tributaries above the confluence of the Clark Fork River and the Blackfoot River."

{ Internal References to 85-2-336:  
x85-2-311    x85-2-335    x85-2-338    x85-2-360  
x85-2-380 }

NEW SECTION.    **Section 4.**    {standard} Repealer.

85-2-335. Definitions.

85-2-338. Upper Clark Fork River basin steering committee -- membership and duties -- comprehensive management plan.

85-2-350. Clark Fork River basin task force -- duties -- water management plan.

{ Internal References to 85-2-335:            x85-2-335    x85-2-350  
Internal References to 85-2-338:            x85-2-335  
Internal References to 85-2-350:            x85-1-203 }



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NEW SECTION. **Section 5. {standard} Codification**

**instruction.** [Section 1] is intended to be codified as an integral part of Title 85, chapter 2, and the provisions of Title 85, chapter 2, apply to [section 1].

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