

Comprehensive Water Review Storage Bill Draft

*** Bill No. ***

Introduced by *****

By Request of the (Agency or Department)

A bill for an act entitled: "An Act creating the Montana water development trust fund; establishing the Montana water development commission to provide recommendations to the legislature; allowing for authorized expenditures related to water developments, revising the Montana Water Storage Policy Act to coordinate with trust fund investments; to require the governor to submit investment priorities to the legislature for water storage; providing for a fund transfer; providing for appropriations; amending sections; and providing for an immediate effective date.

WHEREAS,

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

NEW SECTION. **Section 1. Purpose and policy considerations.** (1) The Montana water development trust fund is established to provide for a permanent source of revenue to foster, promote, and encourage the scientific and sustainable development of the state's water resources that support the human, industrial, mineral, agricultural, aquatic, and recreational resources. The program shall provide, in consultation with the commission established in [section 5], recommended policies and procedures for the planning selection, financing, construction, acquisition, operation, and maintenance of projects, facilities and programs for the conservation, storage, distribution and use of water, necessary in the public interest to develop and preserve Montana's water and related natural resources. The Montana water development program shall promote the development of water infrastructure for irrigation, for reduction of catastrophic flood damage, for natural watershed function, for preservation and development of fish and

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wildlife resources, for protection of water quality, for the protection and improvement of public and private land resources, and shall help make available the waters of this state for all beneficial uses, including but not limited to municipal, domestic, agricultural, industrial, instream flows, fish and wildlife, hydroelectric power, recreation, and the protection of the health, safety, and general welfare of the people of the state of Montana.

(2) All laws of the state relating to the appropriation and use of water shall apply to any project or plan of the Montana water development trust fund and program.

NEW SECTION. Section 2. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

- (1) "commission" means the commission established in [section 5];
- (2) "water development" means
- (3) "water project" means any dam, reservoir, canal, ditch, well or well field, hydroelectric power plant, regulatory work and all works and facilities necessary for the supply and utilization of water for beneficial uses, including the improvement of any feature, facility, function or portion of a project

NEW SECTION. Section 3. Montana water development trust fund. (1) (a) There is a Montana water development trust fund. The Montana water development trust fund is an investment trust fund of the permanent fund type as provided in 17-2-102.

(b) The trust is composed of any revenue gifted to the state, transferred to the account by the Legislature, provided for by appropriation of the Legislature, and interest generated by the account. Revenue into the trust shall include:

(i) for the biennium beginning July 1, 2007, the proceeds of the resource indemnity and ground water assessment tax as provided in **15-38-106**; and

(ii) money allocated from the resource indemnity trust fund interest earnings pursuant to **15-38-202**.

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(2) The principal of the fund must be invested by the board of investments pursuant to Title 17, chapter 6, part 2, and the earnings from the investment must be distributed to the water storage state special revenue account established in 85-1-631.

(3) The principal of the trust fund shall be capped at \$200,000,000. The principal balance of the fund may only be appropriated with a three-fourths vote of the legislature.

NEW SECTION. **Section 4. Expenditures.** (1) The legislature shall appropriate money from the state special revenue fund established in 85-1-631 for programs and investments that fulfill the purpose of the Montana water development trust in this section.

(a) In making those appropriations, the legislature shall consider recommendations from the governor's report provided for in 85-1-704 and those provided by the commission established in [section 5]. No less than 50% of the appropriations from the account each biennium must be made solely for the construction, operation, rehabilitation, expansion, maintenance, and modification of state-owned water storage projects.

(b) The legislature shall allocate no less than 5% funds from this account to the department to be used in accordance with Title 90, chapter 2, part 11 for the purposes of issuing project and planning grants to eligible entities to advance the crucial state need of developing the state's water resources consistent with the purposes in [section 1].

NEW SECTION. **Section 5. Montana water development commission.** (1) There is a Montana water development commission. The purpose of the commission is to provide for the water user stakeholders to discuss and advise the legislature and the department on issues related to funding and development of water resources and storage in Montana. The commission shall also advise the legislature on investments made with the Montana water development trust fund in [section 2] to existing water storage projects and new water storage opportunities. The commission may also consult with the governor in development of the

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report submitted to the legislature under 85-1-704. The commission is attached to the department of natural resource and conservation for administrative purposes only, as provided for in 2-15-121.

(2) The commission consists of seven members appointed by the governor. Except for the initial appointments, each commission member shall serve a five-year term and is subject to reappointment for one succeeding term. The governor shall appoint members to staggered terms with 4 members serving an initial term of 1, 2, or 3 years. In making the appointments, the governor shall appoint members as follows:

- (a) four water right holders, one from each of the water divisions as defined in 3-7-102;
- (b) a representative from watershed or conservation group;
- (c) a representative from a municipality; and
- (d) a representative of the department of natural resources and conservation.

(3) The commission shall:

- (a) meet at least once each fiscal year;
- (b) select one member to serve as the presiding officer of commission meetings; and
- (c) make any recommendations deemed necessary to the water policy interim committee of the legislature of how to advance the development of Montana's water resources through uses of the Montana water development trust fund and program each biennium.

(4) Members of the commission are not entitled to compensation for their services, but are entitled to a mileage allowance, as provided in 2-18-503, and expenses as provided in 2-18-501 and 2-18-502.

Section 6. Section 15-38-106, MCA, is amended to read:

15-38-106. Payment of tax -- records -- collection of taxes -- refunds. (1) The tax imposed by this chapter must be paid by each person to which the tax applies, on or before the due date of the annual statement established in 15-38-105, on the value of product in the year preceding January 1 of the year in which the tax is paid. The tax must be paid to the department at the time that the statement of yield for the preceding calendar year is filed with the department.

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(2) The department shall, in accordance with the provisions of 17-2-124, deposit the proceeds from the resource indemnity and ground water assessment tax in the following order:

(a) annually in due course, from the proceeds of the tax to the CERCLA match debt service fund provided in 75-10-622, the amount necessary, as certified by the department of environmental quality, after crediting to the CERCLA match debt service fund amounts transferred from the CERCLA cost recovery account established under 75-10-631, to pay the principal of, premium, if any, and interest during the next fiscal year on bonds or notes issued pursuant to 75-10-623;

(b) \$366,000 of the proceeds from the tax in the ground water assessment account established by 85-2-905;

(c) for the biennium beginning July 1, 2007, \$150,000 of the proceeds from the tax in the Montana water development trust fund established in [section 3] ~~water storage state special revenue account established in 85-1-631;~~

(d) 50% of the remaining proceeds from the tax divided equally between the environmental quality protection fund established in 75-10-704 and the hazardous waste/CERCLA special revenue account established in 75-10-621; and

(e) all remaining proceeds from the tax in the natural resources projects state special revenue account, established in 15-38-302, for the purpose of making grants to be used for mineral development reclamation projects and renewable resource projects.

(3) Each person to whom the tax applies shall keep records in accordance with 15-38-105, and the records are subject to inspection by the department upon reasonable notice during normal business hours.

(4) The department shall examine the statement and compute the taxes to be imposed, and the amount computed by the department is the tax imposed, assessed against, and payable by the taxpayer. If the tax found to be due is greater than the amount paid, the excess must be paid by the taxpayer to the department within 30 days after written notice of the amount of deficiency is mailed by the department to the taxpayer. If the tax imposed is less than the amount paid, the difference must be

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applied as a tax credit against tax liability for subsequent years or refunded if requested by the taxpayer.

Section 7. Section 15-38-202, MCA, is amended to read:

15-38-202. Investment of resource indemnity trust fund -- expenditure -- minimum balance. (1) All money paid into the resource indemnity trust fund must be invested at the discretion of the board of investments. Only the net earnings, excluding unrealized gains and losses, may be appropriated and expended until the fund balance, excluding unrealized gains and losses, reaches \$100 million. After the fund balance reaches \$100 million, all net earnings, excluding unrealized gains and losses, and all receipts may be appropriated by the legislature and expended, provided that the fund balance, excluding unrealized gains and losses, may never be less than \$100 million.

(2) (a) At the beginning of each fiscal year, there is allocated from the interest income of the resource indemnity trust fund:

(i) \$3.2 million to be deposited in the natural resources projects state special revenue account, established in 15-38-302, for the purpose of making grants;

(ii) \$300,000 to be deposited in the ground water assessment account established in 85-2-905;

(iii) \$500,000 to the department of fish, wildlife, and parks for the purposes of 87-1-283. The future fisheries review panel shall approve and fund qualified mineral reclamation projects before other types of qualified projects.

(b) At the beginning of each biennium, there is allocated from the interest income of the resource indemnity trust fund:

(i) \$650,000 to be deposited in the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161;

(ii) \$500,000 to be deposited in the Montana water development trust fund established in [section 3] ~~water storage state special revenue account created by 85-1-631;~~ and

(iii) \$175,000 to be deposited in the environmental contingency account established in 75-1-1101.

(c) The remainder of the interest income is allocated as follows:

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(i) Sixty-five percent of the interest income of the resource indemnity trust fund must be allocated to the natural resources operations state special revenue account established in 15-38-301.

(ii) Twenty-six percent of the interest income of the resource indemnity trust fund must be allocated to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.

(iii) Nine percent of the interest income of the resource indemnity trust fund must be allocated to the environmental quality protection fund provided for in 75-10-704.

(3) Any formal budget document prepared by the legislature or the executive branch that proposes to appropriate funds other than as provided for by the allocations in subsection (2) must specify the amount of money from each allocation that is proposed to be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the legislative appropriation process or otherwise during a legislative session.

Section 8. Section 85-1-220, MCA, is amended to read:

85-1-220. State water project hydroelectric power generation special revenue account created -- revenue allocated. (1) There is a state water project hydroelectric power generation special revenue account within the state special revenue fund established in **17-2-102**.

(2) Except as provided in the applicable bond resolution, all revenue derived from hydroelectric power generation at state water conservation projects under Title 85, chapter 1, must be paid into this account as received.

(3) The revenue received under this section must be used to repair and rehabilitate state-owned water projects and works and to pay the cost of financing those activities, including for the investment in the Montana water development trust fund described in [section 3] for the long-term generation of revenue for the state-owned water projects.

(4) The funds deposited in the state water project hydroelectric power generation special revenue account under this section but not appropriated during the biennium and money appropriated from the account

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but not expended during the biennium for which it is appropriated must be deposited in the Montana water development trust fund established in [section 3] ~~remain in the account for future appropriation under this section and may not be appropriated from the account except as authorized under this section.~~

Section 9. Section 85-1-631, MCA, is amended to read:

85-1-631. Water storage state special revenue account created -- revenues allocated -- appropriations from account. (1) There is a water storage state special revenue account within the state special revenue fund established in **17-2-102**.

(2) There must be paid into the water storage state special revenue account:

(a) interest generated from the Montana water development trust fund established in [section 3] ~~for the biennium beginning July 1, 2007, the proceeds of the resource indemnity and ground water assessment tax as provided in **15-38-106**; and~~

(b) ~~money allocated from the resource indemnity trust fund interest earnings pursuant to **15-38-202** and all revenue of the works and other money as provided in **85-1-332**.~~

(3) (a) All revenue provided from **85-1-332** (1) (e) and (1) (f) deposited in the water storage state special revenue account must be appropriated solely for the construction, operation, rehabilitation, expansion, maintenance, and modification of state-owned water storage projects.

(b) All other money in the account shall be appropriated biennially by the legislature pursuant to [section 4] for the purposes identified in [section 1].

(4) Money that was not encumbered or expended from the water storage state special revenue account during the previous biennium must remain in the account.

(5) Deposits to the water storage state special revenue account must be placed in short-term investments and accrue interest, which must be deposited in the water storage state special revenue account.

(6) The purpose of the water storage state special revenue account is to provide money exclusively to meet the purposes for water storage and

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development as identified in [section 1], which includes the ~~for~~ construction, operation, rehabilitation, expansion, maintenance, and modification of state-owned water storage projects.

Section 10. Section 85-1-702, MCA, is amended to read:

85-1-702. Purpose. The purpose of this part is to define the role of water storage in solving water management problems and, if water storage projects provide the best solutions to those problems, to facilitate the development of the projects through state resources, including the revenue generated under the Montana water development trust fund. The purpose of this part is also to provide for the sustainable planning and prioritization of state resources in the development of water storage in Montana.

Section 11. Section 85-1-703, MCA, is amended to read:

85-1-703. Water storage policy. (1) The legislature recognizes that water resource needs are growing, existing water facilities are aging and in need of repair, and new water storage projects have become more difficult to complete. Other types of action will be needed to solve many emerging problems, but if water storage is the best way to meet growing water needs and solve problems, then it should be actively pursued. The legislature further recognizes that the primary barrier to the thoughtful and sustainable development of water storage is private, state, and federal funding for projects that develop the state's water resources and increase water storage.

(2) In determining the best solution for a particular water management problem, the state shall:

(a) carefully define the problem;

(b) identify all options to solve the problem, including water storage;

(c) determine whether water is physically and legally available to solve the problem; ~~and~~

(d) identify funding needs and private, state, and federal funding opportunities related to water development through storage; and

~~(d)~~ (e) select the option that best meets the following criteria:

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- (i) technical feasibility;
- (ii) financial feasibility;
- (iii) economic feasibility;
- (iv) political feasibility;
- (v) legal feasibility; and
- (vi) environmental feasibility.

Section 12. Section 85-1-704, MCA, is amended to read:

85-1-704. Prioritization of water storage projects -- governor's report. (1) The governor shall submit to the legislature a report in accordance with **5-11-210** identifying specific water storage projects proposed for development, including the rehabilitation of existing projects and new project proposals. The report shall also make recommendations for the investment of funds pursuant to [section 4] through the Montana water development trust fund and program in [section 2]. The report must contain:

- (a) a list of water storage project priorities;
- (b) an implementation strategy for each priority project that identifies the resources (including specific budget requests), government actions, and other actions needed to accomplish the project; ~~and~~
- (c) a progress report on the development of water storage projects during the previous 2 years; and
- (d) recommendations for water development investments in funds available for expenditure in [section 4] for the next 2 years.

(2) In setting priorities among new water storage projects, the governor shall consider whether a project:

- (a) solves a severe water problem;
- (b) provides multiple uses and benefits;
- (c) provides for public uses;
- (d) shows strong evidence of broad citizen support;
- (e) is able to obtain nonstate sources of funding;
- (f) protects and seeks to enhance social, ecological, cultural, and aesthetic values;
- (g) improves local and state economic development;

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- (h) could resolve Indian and federal reserved water rights issues;
- (i) supports water conservation activities; and
- (j) promotes the use of water reserved under Montana law.

(3) In setting priorities among water storage rehabilitation projects, the governor shall consider whether the project:

- (a) is needed to protect public safety;
- (b) has impacts if not repaired or rehabilitated; and
- (c) accomplishes the goals listed in subsections (2)(a) through (2)(j).

(4) In establishing budget priorities for the allocation of state water storage development funds under [section 4]:

(a) first preference must be given to projects that resolve threats to life and property posed by high-hazard facilities that are in an unsafe condition;

(b) second preference must be given to projects that improve or expand existing water storage facilities; and

(c) third preference must be given to the planning and construction of new water storage facilities.

NEW SECTION. Section 13. Effective date. [This act] is effective upon passage and approval.

NEW SECTION. Section 14. Transfer of funds. (1) There is transferred \$15,000,000 from the general fund to the Montana water development trust established in [section 3] for the biennium beginning July 1, 2025.

(2) There is transferred \$15,000,000 from the account established in 85-1-220 to the Montana water development trust established in [section 3] for the biennium beginning July 1, 2025.

(3) There is transferred \$1 from the account established in 85-1-631 to the Montana water development trust established in [section 3] for the biennium beginning in July 1, 2025.

(4) XX Other transfers XX

(5) The legislature intends these transfers to be one-time-only transfers.

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NEW SECTION. **Section 15. Appropriation.** (1) There is appropriation of the amount of \$500,000 from the account described in 85-1-631 to the Montana water development trust described in [section 3] each biennium through 2031.

(2) There is appropriation of the amount of \$1 from the account described in 85-1-220 to the Montana water development trust described in [section 3] each biennium through 2031.

(3) Money from: FWP repayment of St Mary, FWP leases, etc.

(4) The legislature intends these appropriations to be considered part of the base budget for the department of natural resources and conservation for the next legislative session.

NEW SECTION. **Section 16. Codification instruction.**

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