

BILL NO _____

INTRODUCED BY _____

BY REQUEST OF _____

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA WATER USE ACT REGARDING APPROPRIATIONS EXEMPT FROM THE PERMITTING PROCESS; PROVIDING FOR THE DESIGNATION OF CONTROLLED GROUND WATER AREAS FOR WATER QUANTITY; PROVIDING FOR THE DESIGNATION OF TEMPORARY GROUND WATER MONITORING AREAS FOR WATER QUANTITY; PROVIDING FOR RULEMAKING; AMENDING SECTIONS; AND PROVIDING FOR AN EFFECTIVE DATE."

WHEREAS,

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

Section 1. Section 85-2-113, MCA, is amended to read;

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

(2) The department may adopt rules necessary to implement and carry out the purposes and provisions of this chapter. These rules may include but are not limited to rules to:

(a) govern the issuance and terms of interim permits authorizing an applicant for a regular permit under this chapter to begin appropriating water immediately, pending final approval or denial by the department of the application for a regular permit;

(b) require the owner or operator of appropriation facilities to install and maintain suitable controlling and measuring devices and report data. ~~except that the department may not require a meter on a water well outside of a controlled ground water area or proposed controlled ground water area unless the maximum appropriation of the well is in excess of the limitation contained in 85-2-306;~~

(c) require the owner or operator of appropriation facilities to report to the department the readings of measuring devices at reasonable intervals and to file reports on appropriations; and

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

(3) The department shall adopt rules providing for and governing temporary emergency appropriations, including for emergency fire training and emergency fire-related operations, without prior application for a permit, necessary to protect lives or property.

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

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

Section 2. 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, 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;

(3) When the appropriation is within the Rye Creek Stream Depletion Zone - Ravalli County, is 20 gallons per minute or less, and does not exceed 2 acre-feet a year, except that a combined appropriation from

the same source by two or more wells or developed springs exceeding this limitation requires a permit.

~~(3)~~ (4) ~~(a)~~—Outside the boundaries of a controlled ground water area, stream depletion zone, or aquifer closure, a permit is not required before appropriating ground water by means of a well or developed spring:

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

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

(~~c~~) (i) for an appropriation on a parcel of land not being divided pursuant to Title 76, chapters 3 or 4, when the appropriation ~~is~~ outside a stream depletion zone, is 35 gallons a minute or less, and does not exceed 10 acre-feet a year, except that a combined appropriation from the same source by two or more wells or developed springs exceeding 10 acre-feet, regardless of the flow rate, requires a permit.; ~~or~~ When evaluating if two or more wells or developed springs is a combined appropriation under this subsection, the department will consider the following factors:

- (A) physically manifold water system;
- (B) purpose(s) of use;
- (C) place of use;
- (D) tract information;
- (E) ownership;
- (F) proximity of wells or developed springs;
- (G) source of water; and
- (H) topography.

(ii) If the parcel received a certificate of subdivision approval through the department of environmental quality prior to February 14, 2024, then the water uses for the lots and volumes allocated in the predetermination letter from the department will define the amount allowed under the exception.

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

(d) for an appropriation on a parcel of land being divided pursuant to Title 76, chapter 3 or 4, when the appropriation is 35 gallons a minute or less and meets the conditions (i) through (ii) of this subsection. An appropriation exceeding the conditions in this subsection requires a permit. All water use under this subsection must be measured and reported annually to the department. A totalizing metering device must be used, and measurements reported annually on a form prescribed by the department. Noncompliance with metering and reporting requirements may result in a fine designated by the department;

(i) (A) The parcel was created through a division of a tract of record as defined in 76-3-103(17) (a) in existence on October 17, 2014;

(B) Water use is limited to use on no more than 24 parcels resulting from the division after October 17, 2014, of the tract of record in (A);

(C) The volume of water used on the parcel does not exceed 0.5 acre-ft per acre of land and does not exceed 1 acre-foot total;
or

(D) The cumulative volume under this exception for the tract of record in (A) cannot exceed a total of 24 acre-ft.

(ii) If the parcel was divided from a tract of record as defined in 76-3-103(17) (a) in existence on or before October 17, 2014, and received a certificate of subdivision approval through the department of environmental quality and a predetermination letter under ARM 17.36.103(n) and (o) from the department of natural resources and conservation prior to February 14, 2024, then the water uses for the lots and volumes allocated in the predetermination letter from the department will define the amount allowed under the exception and will count against the maximum limitations in (i) for any future divisions of land.

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

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

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

(f) (e) A certificate of water right may not be issued until a correct and complete notice has been filed with the department, including proof of landowner notification or a written federal special use authorization as necessary under subsection (1). The original of the certificate must be sent to the appropriator. The department shall

keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date of priority of the right.

(g ~~e~~) (i) Construction of a water supply system subject to Title 75, chapter 6, part 1, and use of a permit exception for the appropriation of water pursuant to this section is proof of beneficial use.

(ii) The department shall allocate a volume of 10 acre-feet a year to the system and issue a certificate of water right after the conditions in subsection (4) (g) (i) ~~(3) (d) (i)~~ are met.

(iii) The department shall consider a water right as perfected after the conditions in subsection (4) (g) (i) ~~(3) (d) (i)~~ are met.

(iv) When the appropriation is for a water supply system that is subject to Title 75, chapter 6, part 1, and is located outside of a stream depletion zone and does not exceed 10 acre-feet a year:

(A) For the purposes of subsection (4) (g) (i) ~~(3) (b) (i)~~, the appropriation will be considered perfected upon completion of construction of the water supply system.

(B) A copy of the department of environmental quality approval for the water supply system must be submitted with the notice of completion. This section does not preclude the public water supply developer or any subsequent owners from expanding the water system or from revising the water use restrictions within the subdivision, provided that the total amount does not exceed 10 acre-feet per year.

(C) Water appropriated under this exception must be measured and reported annually to the department.

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

filing of a notice, as provided in subsection (4) ~~(3)~~, or the date of the filing of the claim of existing water right.

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

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

- (a) the maximum capacity of the impoundment or pit is less than 15 acre-feet;
- (b) the appropriation is less than 30 acre-feet a year;
- (c) the appropriation is from an ephemeral stream, an intermittent stream, or another source other than a perennial flowing stream; and
- (d) the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger.

(8) ~~(7)~~ (a) Within 60 days after constructing an impoundment or pit, the appropriator shall apply for a permit as prescribed by this part.

Subject to subsection (7) (b), upon receipt of a correct and complete application for a stock water provisional permit, the department shall automatically issue a provisional permit. If the department determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit subject to terms, conditions, restrictions, or limitations that it considers necessary to protect the rights of other appropriators.

(b) If the impoundment or pit is on national forest system lands, an application is not correct and complete under this section until the applicant has submitted proof of any 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 permit.

(c) The purpose of use authorized for a provisional permit under this exception may not be subsequently changed after the provisional permit is issued by the department.

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

(10 &) Pursuant to 85-20-1902, the provisions of this section do not apply within the exterior boundaries of the Flathead Indian reservation.

NEW SECTION. **Section 3. Legislative Aquifer Closures and Monitoring Areas.**

(1) Subject to the provisions of subsection (2) of this section, ground water may only be appropriated according to a permit received pursuant to 85-2-302 in the following legislative aquifer closure areas:

- (a) The Gallatin Valley Aquifer as designated by the department; and
- (b) The Helena Valley Aquifer as designated by the department; and
- (c) The Bitterroot Valley Aquifer as designated by the department; and
- (d) The Missoula Valley Aquifer as designated by the department.

(2) Legislative aquifer closures shall include the following provisions:

(a) A provision closing the aquifer area to all exceptions from the permitting process under 85-2-306 except for those in (c), or one exception for up to 0.5AF if the following situations can be demonstrated on a form provided by the department:

- (i) Single living unit on a tract of record in existence on January 1, 2025, and connection to public water and mitigation is infeasible; or
- (ii) Stockwater.

(iii) A change in purpose cannot be accepted or authorized on a water right issued for an exception under (i) or (ii).

(b) A provision requiring metering and reporting for all new water rights and authorizations pursuant to 85-2-306, 85-2-311, and 85-2-402 in aquifer closure areas. A totalizing metering device must be used, and measurements reported annually on a form provided by the department. Noncompliance with metering and reporting requirements may result in a fine designated by the department;

(c) A provision allowing for completion of appropriations for parcels created after October 17, 2014 which received a certificate of subdivision approval through the department of environmental quality and a predetermination letter under ARM 17.36.103(n) and (o) from the department of natural resources and conservation prior to February 14, 2024.

(3) Subject to the provisions of subsection (4) of this section, the following areas are established as legislative aquifer monitoring areas:

(a) Flathead Valley Deep and Shallow Aquifer as defined by the department; and

(b) Billings Terrace Aquifer as defined by the department.

(4) Legislative aquifer monitoring areas shall include the following provisions:

(a) A provision requiring metering and reporting for all new water rights and authorizations pursuant to 85-2-306, 85-2-311, and 85-2-402. A totalizing metering device must be used, and measurements reported annually on a form prescribed by the department.

Noncompliance with metering and reporting requirements may result in a fine designated by the department;

(b) The department shall review the monitoring data on a biennial basis, to determine if change in status is needed.

Section 4. Section 85-2-506, MCA, is amended to read:

85-2-506. Controlled ground water areas -- designation or modification.

(1) The department may by rule designate or modify ~~permanent or temporary~~ controlled ground water areas as provided in this part. The rule for each controlled ground water area must designate the boundaries of the controlled ground water area. There are six types of controlled ground water areas:

- (a) controlled ground water area for public health, safety, and welfare;
- (b) temporary public health, safety, and welfare controlled ground water areas;
- (c) controlled ground water area for water quantity;
- (d) ground water monitoring areas for water quantity;
- (e) controlled ground water area for water quality; or
- (f) ground water monitoring area for water quality.

(2) The rulemaking process for designation or modification of a controlled ground water area may be initiated by the department after a submission of a correct and complete petition by:

- ~~(a) the department;~~
- ~~(b) submission of a correct and complete petition from a state or local public health agency for identified public health risks; or~~
- ~~(c) submission of a correct and complete petition:~~
 - ~~(i) by a municipality, county, conservation district, or local water quality district formed under Title 7, chapter 13, part 45;~~
 - ~~or~~
 - ~~(ii) signed by at least one-third of the water right holders in a proposed controlled ground water area.~~
- (a) For subsection (5), the department, a state or local public health agency, a municipality, county, conservation district, or local water quality district formed under Title 7, chapter 13, part 45, the department of environmental quality, or at least one-third of the water right holders in a proposed area;
- (b) For subsection (7) and (8), the department, or at least one-third of the water right holders in a proposed area; or

(c) For subsection (9) and (10) a municipality, county, conservation district, or local water quality district formed under Title 7, chapter 13, part 45, or the department of environmental quality; or at least one-third of the water right holders in a proposed area.

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

(i) be in a form prescribed by the department and must contain analysis prepared by a hydrogeologist, a qualified scientist, or a qualified licensed professional engineer concluding that one or more of the criteria provided in subsections (5) through (10) are met; and

(ii) describe proposed measures, if any, to mitigate effects of the criteria identified in subsections (5) or (6) that are alleged in the petition.

(iii) For petitions submitted under subsections (7) or (8) the data collection and analysis shall be conducted by the department if greater than 50% of the water right holders whose point of diversion falls within the proposed controlled ground water area for water quantity petition the department. The department may not conduct more than two analyses for petitions for the designation of a controlled ground water area for water quantity or ground water monitoring area for water quantity annually.

(b) When the department proposes a rule pursuant to this section, the place for the hearing must be within or as close as practical to the proposed or existing controlled ground water area.

(c) (i) The department shall notify the petitioner of any defects in a petition within 180 days. If the department does not notify the petitioner of any defects within 180 days, the petition must be treated as correct and complete.

(ii) A petition that is not made correct and complete within 90 days from the date of notification by the department of any defect is terminated.

(4) (a) Within 60 days after a petition is determined to be correct and complete, the department shall:

(i) deny in writing the petition in whole or in part, stating the reasons for denial;

(ii) inform the petitioner that the department will study the information presented in the petition for a period not to exceed 90 days before denying or proceeding with the petition; or

(iii) initiate rulemaking proceedings in accordance with Title 2, chapter 4, part 3.

(b) Failure of the department to act under subsection (4) (a) does not mandate that the department grant the petition for rulemaking.

(c) In addition to the notice requirements of Title 2, chapter 4, parts 1 through 4, the department shall provide public notice of the rulemaking hearing by:

(i) publishing a notice at least once each week for 3 successive weeks, with the first notice not less than 30 days before the date of the hearing in a newspaper of general circulation in the county or counties in which the proposed controlled ground water area is located;

(ii) serving by mail a copy of the notice, not less than 30 days before the hearing, upon each person or public agency known from an examination of the records of the department to be a water right holder with a diversion within the proposed controlled ground water area, all landowners of record within the proposed controlled ground water area, and each well driller licensed in Montana whose address is within any county in which any part of the proposed controlled ground water area is located; and

(iii) serving by mail a copy of the notice upon any other person or state or federal agency that the department feels may be interested in or affected by the proposed designation or modification of a controlled ground water area.

(d) The notice under subsection (4) (c) must include a summary of the basis for the proposed rule. Publication and mailing of the notice as prescribed in this section, when completed, is considered to be sufficient notice of the hearing to all interested persons.

(5) (a) The department may designate a ~~permanent~~ public health, safety, and welfare controlled ground water area by rule if it finds by a preponderance of the evidence that any of the following criteria have been met and cannot be appropriately mitigated:

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

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

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

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

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

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

(b) A public health, safety, and welfare controlled ground water area may include but is not limited to the following control provisions:

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

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

(iii) a provision requiring measurement of future ground water or surface water appropriations;

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

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

(vi) a provision for mitigation of ground water withdrawals;

(vii) a provision for water quality testing;

(viii) a provision for data reporting to the department; and

(ix) other control provisions that the department determines are appropriate and adopts through rulemaking.

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

(b) A temporary public health, safety, and welfare controlled ground water area designation is for the purpose of study and cannot include

the control provisions provided in subsection ~~(7)~~ (5), other than measurement, water quality testing, and reporting requirements.

(c) A temporary public health, safety, and welfare controlled ground water area designation may not exceed a total of 6 years, including any extensions.

(d) Prior to expiration of a temporary public health, safety, and welfare controlled ground water area, the department may amend or repeal the rule establishing the temporary public health, safety, and welfare controlled ground water area or may designate a permanent controlled ground water area through the rulemaking process under this section.

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

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

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

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

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

~~(c) a provision requiring measurement of future ground water or surface water appropriations;~~

~~(d) a provision requiring the filing of notice on land records within the boundary of a permanent controlled ground water area to inform prospective holders of an interest in the property of the existence of a permanent controlled ground water area. Notice of the designation~~

~~must be removed or modified as necessary to accurately reflect modification or repeal of a permanent designation within 60 days.~~

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

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

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

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

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

(7) (a) The department shall designate or modify controlled ground water areas for water quantity by rule if it finds by a preponderance of the evidence that any of the following criteria have been met:

(i) Where the department identifies a high concentration of exempt ground water use; and

(ii) Where the department determines ground water level is declining or is projected to decline due to pumping based on a ten-year period of record which may result in a chronic lowering of the ground water table or permanent loss of aquifer storage based on available data or consultation with Montana Bureau of Mines and Geology or other relevant agencies; or

(iii) Where the department determines that 80% or more of the legally available ground water has been appropriated; or

(iv) Where the department determines that 100% or more of the legally available hydraulically connected surface water has been appropriated for any month.

(b) Control provisions for controlled ground water areas for water quantity shall include but are not limited to the following provisions:

(i) A provision closing the controlled ground water area for water quantity to all exceptions from the permitting process under 85-2-306, except for specific appropriations under 85-2-306 that may be authorized by rule pursuant to this section;

(ii) A provision requiring metering and reporting for all new water rights and authorizations pursuant to 85-2-306, 85-2-311, and 85-2-402 in controlled ground areas for water quantity. A totalizing metering device must be used, and measurements reported annually on a form prescribed by the department. Noncompliance with metering and reporting requirements may result in a fine designated by the department;

(iii) A provision allowing for completion of appropriations for parcels created after October 17, 2014 which received a certificate of subdivision approval through the department of environmental quality and a predetermination letter under ARM 17.36.103(n) and (o) from the department of natural resources and conservation prior to February 14, 2024;

(iv) A provision closing the aquifer area to all exceptions from the permitting process under 85-2-306 except for those in (c), or one exception for up to 0.5AF if the following situations can be demonstrated on a form provided by the department:

(A) One single living unit on a tract of record in existence on January 1, 2025, and connection to public water and mitigation is infeasible; or

(B) Stockwater.

(C) A change in purpose cannot be accepted or authorized on a water right issued for an exception under (i) or (ii).

(v) Other control provisions that the department determines are appropriate and adopts through the rulemaking.

(8) (a) The department shall designate or modify ground water monitoring areas for water quantity by rule if it finds by a preponderance of the evidence that any of the following criteria have been met:

(i) Where the department identifies a high concentration of exempt ground water use; and

(ii) Where the department identifies a decreasing ground water level trend in the aquifer, and long-term cause/effect and projected trend

need to be analyzed based on data or consultation with Montana Bureau of Mines and Geology or other relevant agencies; or

(iii) Where the department determines 70% or more of the legally available ground water has been appropriated; or

(iv) Where the department determines that aquifer recharge is reliant on irrigation losses or where the geologic structure or formation has limited storage or potential for storage based on data or consultation with Montana Bureau of Mines and Geology or other relevant agencies;

or

(v) Where the department determines 90% or more of the legally available hydraulically connected surface water has been appropriated for any month.

(b) Control provisions for ground water monitoring areas for water quantity shall include but are not limited to the following provisions:

(i) A provision requiring the department to develop a monitoring plan for each designated ground water monitoring areas in consultation with Montana Bureau of Mines and Geology or other relevant agencies;

(ii) A provision requiring metering and reporting for all new water rights and authorizations pursuant to 85-2-311, 85-2-306, and 85-2-402 in ground water monitoring areas for water quantity pursuant to 85-2-113. A totalizing metering device must be used, and measurements reported annually on a form prescribed by the department.

Noncompliance with metering and reporting requirements may result in a fine designated by the department;

(iii) The department shall review the monitoring data and plan in (i) on a biennial basis, to determine if change in status is needed.

(9) (a) The department shall designate or modify controlled ground water areas for water quality by rule if it finds by a preponderance of the evidence that any of the following criteria have been met:

(i) Fifty percent of the designated area is classified as high septic system density as defined in the department of environmental quality circular PWS-6 using site-specific data;
and

(ii) Elevated nitrate concentration as provided in ARM 17.30 subsection 7; or

(iii) Exceedance of any ground water human health standard published in department circular DEQ-7 in more than 25% of ≥ 30 wells; or

(iv) Exceedance of any US EPA human health advisory for a toxic or carcinogenic compound in more than 25% of ≥ 30 wells; or

(v) (A) The aquifer is known or can be demonstrated to be interconnected with surface water, and aquatic life or recreation beneficial use of the connected surface water is listed as impaired by DEQ pursuant to Title 75 chapter 5, and the cause of the impairment is total nitrogen or total phosphorus attributable to on-site subsurface wastewater treatment and disposal systems sources at a source contribution equal to or greater than 10 percent;

(B) If a connected surface water is not listed as impaired by DEQ, the petitioner may provide substantial credible data and its own analyses conducted in accordance with water quality assessment methods prescribed by DEQ to demonstrate an impairment to aquatic life or recreation beneficial use and the cause of the impairment is total nitrogen or total phosphorous attributable to on-site subsurface wastewater treatment and disposal systems sources at a source contribution equal to or greater than 10 percent.

(b) Control provisions for controlled ground water areas for water quality shall include provisions that the department determines are appropriate and adopts through the rulemaking.

(10) (a) The department shall designate or modify ground water monitoring areas for water quality by rule if it finds by a preponderance of the evidence that any of the following criteria have been met:

(i) Fifty percent of the designated area is classified as moderate septic system density as defined in department of environmental quality circular PWS-6 using site-specific data; and

(ii) Where background nitrate as nitrogen is 5.0 mg/l or more using DEQ's nondegradation methods for drainfields that are not required to get a discharge permit; or

(iii) Exceedance of any ground water human health standard published in department circular DEQ-7 in more than 10% of ≥30 wells; or

(iv) Exceedance of any US EPA human health advisory for a toxic or carcinogenic compound in more than 10% of ≥30 wells.

(b) Control provisions for ground water monitoring areas for water quality shall include provisions that the department determines are appropriate and adopts through the rulemaking.

(11) The department may initiate rulemaking for modification or removal of a designated area under subsections (5), (7), (8), (9), or (10) if the designated area no longer meets the criteria applicable to the designation.

(a) A petition under subsection (3) may be filed for modification or removal of a designated area in subsections (5), (7), (8), (9), or (10). The petition must provide facts of how the designated area no longer meets the respective criteria for the designation. If the petition proves that the criteria are no longer met, the department shall modify or remove the designation of the area.

(b) A petition for modification or removal may be filed to the department by the same entities listed in subsection (2).

~~(8)~~(12) Pursuant to 85-20-1902, the provisions of this section do not apply within the exterior boundaries of the Flathead Indian reservation.

Section 5. Codification instructions. (1) [Section 3] is intended to be codified as an integral component of Title 85, chapter 2, part 5, and the provisions of Title 85, chapter 2, part 5 apply to [section 3].

Section 6. Effective date. [this act] is effective on passage and approval.