

SENATE BILL NO. 263

INTRODUCED BY B. BEARD

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING STATE OWNERSHIP OF LESSEE WATER RIGHTS USED ON STATE LANDS; REVISING AUTHORIZED IMPROVEMENT ON STATE LANDS RELATED TO WATER RIGHTS; ~~PROVIDING FOR RESTRICTIONS ON STATE OWNERSHIP OF WATER RIGHTS;~~ PROVIDING A PROCESS FOR THE LAND BOARD TO DECIDE WHETHER TO AUTHORIZE LEGAL ~~ASSERTIONS BY THE STATE OF OWNERSHIP OF PRIVATELY OWNED WATER RIGHTS USED TEMPORARILY ON STATE LANDS;~~ PROVIDING FOR DEPARTMENT REPORTING; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 77-6-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 77-6-301, MCA, is amended to read:

"77-6-301. Improvements authorized. (1) A lessee of state lands may place ~~upon~~ on the lands a reasonable amount of improvements directly related to conservation of the land or necessary for proper utilization of it. These improvements may consist of fences, cultivation, improvement of the land itself, irrigation ditches, sheds, wells, reservoirs, water rights, and similar improvements.

(2) A water right owner with a state land lease may put water from a well, STREAM, ~~or developed~~ spring, OR GROUND WATER DEVELOPMENT with a ground water development works located on private land to beneficial use on state trust land for the duration of a state land lease. The lessee may remove associated stock tanks and other stock water improvements without authorization from the department, AND THE WATER RIGHT OWNER MAY CEASE BENEFICIAL USE AND REMOVE ASSOCIATED WORKS, INCLUDING STOCK TANKS AND OTHER STOCK WATER IMPROVEMENTS, WITHOUT AUTHORIZATION FROM THE DEPARTMENT. THE DEPARTMENT MUST BE GIVEN NOTICE WITHIN 90 DAYS OF THE REMOVAL."

NEW SECTION. Section 2. Restrictions on state ownership of water right -- department

reporting. (1) Except as provided in 85-2-441(2)(b) and OR unless authorized by the board pursuant to subsection (2) of this section, the ~~department~~ STATE may not TAKE ACTION, IN LEGAL PROCEEDINGS OR OTHERWISE, TO obtain an ownership interest in:

———(a) ~~a water right or the ground water development works of a water right~~ that is diverted from a well, STREAM, ~~or developed spring, OR GROUNDWATER DEVELOPMENT~~ located on private land and put to beneficial use on state trust land; ~~or~~

(b) ————— a water right owned by lessee of state lands.

(2) (a) The department shall notify the lessee or water right owner of the department's intention to ~~obtain ownership of the water right 180 days~~ SEEK AUTHORIZATION FROM THE BOARD AS PROVIDED IN THIS SECTION TO OBTAIN AN OWNERSHIP INTEREST IN A WATER RIGHT THROUGH LEGAL PROCEEDINGS 90 DAYS before submitting that request to the board.

(b) WITHIN 60 DAYS OF THE RECEIPT OF A NOTICE REQUIRED IN SUBSECTION (2)(A), THE LESSEE OR WATER RIGHT OWNER MAY REQUEST, AND THE BOARD SHALL GRANT, THE OPPORTUNITY AT THE BOARD HEARING AT WHICH THE DEPARTMENT SEEKS AUTHORIZATION TO OBTAIN AN OWNERSHIP INTEREST IN THE LESSEE'S OR WATER RIGHT OWNER'S WATER RIGHT TO PRESENT FACTS AND REASONS WHY THE BOARD MAY NOT GRANT THE DEPARTMENT'S REQUEST. The board shall allow the THE lessee or water right owner to MAY have a representative, WHO MAY BE AN ATTORNEY, MAKE THE PRESENTATION at a board hearing to submit testimony and evidence. The representative may be an attorney. THE BOARD SHALL NOTIFY THE LESSEE OR WATER RIGHT OWNER WHO HAS MADE THE REQUEST OF THE TIME AND PLACE FOR THE HEARING. THE HEARING MUST BE OPEN TO THE PUBLIC AND MUST ALLOW PUBLIC COMMENT.

(c) ~~If the board approves the department's request for an ownership interest in a water right, AFTER A HEARING HELD IN ACCORDANCE WITH SUBSECTION (2)(B), THE BOARD DECIDES BY MAJORITY VOTE TO AUTHORIZE THE DEPARTMENT'S REQUEST TO SEEK THROUGH LEGAL PROCEEDINGS TO OBTAIN ANY OWNERSHIP INTEREST IN THE WATER RIGHT AT ISSUE, THE DEPARTMENT MAY PROCEED WITH THE LEGAL PROCEEDINGS AND a court of competent jurisdiction shall MAY determine whether the state is the owner of the water right OR ANY INTEREST IN THE WATER RIGHT.~~

(3) Within 180 days of [the effective date of this act], the department shall provide to the board a list of all water rights to which the department has obtained ownership from a lessee since July 1, 1982. The

1 board may request additional information from the department regarding any water right on the list. The board
2 may take additional action regarding a water right on the list after notice to the water right owners and lessees
3 involved.

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5 NEW SECTION. **Section 3. Codification instruction.** [Section 2] is intended to be codified as an
6 integral part of Title 77, chapter 1, part 1, and the provisions of Title 77, chapter 1, part 1, apply to [section 2].

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8 NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

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