

1 under this chapter to begin appropriating water immediately, pending final approval or denial by the department
2 of the application for a regular permit;

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

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

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

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

14 (4) (a) The department shall adopt rules to require the owner or operator of an appropriation facility
15 on a watercourse or portions of a watercourse identified as chronically dewatered by the department under 85-
16 2-150 to acquire, install, and maintain a suitable controlling and measuring device no later than 2 years after
17 designation of the watercourse or portions of the watercourse as chronically dewatered, except that when the
18 department specifically finds that the installation of measuring devices along the entire watercourse or portions
19 of the watercourse is not practicable within the 2-year deadline, it may establish a later deadline.

20 (b) For the purposes of subsection (4), an appropriation facility includes but is not limited to any
21 method used to divert, impound, or withdraw water from a watercourse. Hydroelectric facilities that are using
22 recognized methods of flow measurement, as determined by the department, are in compliance with subsection
23 (4)."

24

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

26 **"85-2-114. Judicial enforcement.** (1) If the department ascertains, by a means reasonably
27 considered sufficient by it, that a person is wasting water, using water unlawfully, preventing water from moving
28 to another person having a prior right to use the water, or violating a provision of this chapter, it may petition the

1 district court supervising the distribution of water among appropriators from the source to:

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

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

7 (c) issue a temporary, preliminary, or permanent injunction to prevent a violation of this chapter.

8 Notwithstanding the provisions of Title 27, chapter 19, part 3, a temporary restraining order must be granted if it
9 clearly appears from the specific facts shown by affidavit or by the verified complaint that a provision of this
10 chapter is being violated.

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

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

17 (4) The county attorney or the attorney general may bring suit to enjoin the waste, unlawful use,
18 interference, or violation or bring an action under 85-2-122(1) or (2) without being requested to do so by the
19 department.

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

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

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

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

3 (9) The provisions of this section do not limit a water right owner from seeking relief, including
4 injunctive relief, in district court under Title 27, chapter 19, or this chapter."
5

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

7 **"85-2-122. Penalties.** (1) Except as provided in 85-2-410(6), a person who violates or refuses or
8 neglects to comply with the provisions of 85-2-114, any order of the department, or any rule of the department
9 is subject to a civil penalty not to exceed \$1,000 per violation. Each day of violation constitutes a separate
10 violation.

11 (2) A person who violates or refuses or neglects to comply with the required total volume and flow
12 rates provided for in 85-2-306 (3)(a)(iii) and (3)(a)(iv) may be subject to a civil penalty of up to \$500 for each 0.1
13 acre feet per year of excess water used.

14 ~~(2)(3)~~ Except as provided in subsection (3), fines collected by the department or a district court under
15 ~~subsection (1) this section~~ must be deposited in the account established in 85-2-318 for use by the department
16 in the enforcement of 85-2-114.

17 ~~(3)(4)~~ If a fine is collected by an independent action brought by:

- 18 (a) the county attorney, the fine must be deposited in the general fund of the county; or
- 19 (b) the county attorney with assistance from the attorney general or by the attorney general, the
20 fine must be deposited in the water right enforcement account created in 44-4-1101 and must be used to
21 enforce the provisions of 85-2-114."
22

23 **Section 5.** Section 85-2-306, MCA, is amended to read:

24 **"85-2-306. Exceptions to permit requirements.** (1) (a) Except as provided in subsection (1)(b),
25 ground water may be appropriated only by a person who has a possessory interest in the property where the
26 water is to be put to beneficial use and exclusive property rights in the ground water development works.

27 (b) If another person has rights in the ground water development works, water may be
28 appropriated with the written consent of the person with those property rights or, if the ground water

1 development works are on national forest system lands, with any prior written special use authorization required
2 by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion,
3 impoundment, storage, transportation, withdrawal, use, or distribution of water under the certificate.

4 (c) If the person does not have a possessory interest in the real property from which the ground
5 water may be appropriated, the person shall provide to the owner of the real property written notification of the
6 works and the person's intent to appropriate ground water from the works. The written notification must be
7 provided to the landowner at least 30 days prior to constructing any associated works or, if no new or expanded
8 works are proposed, 30 days prior to appropriating the water. The written notification under this subsection is a
9 notice requirement only and does not create an easement in or over the real property where the ground water
10 development works are located.

11 (2) Inside the boundaries of a controlled ground water area, ground water may be appropriated
12 only:

13 (a) according to a permit received pursuant to 85-2-508; or

14 (b) according to the requirements of a rule promulgated pursuant to 85-2-506.

15 (3) (a) Outside the boundaries of a controlled ground water area, a permit is not required before
16 appropriating ground water by means of a well or developed spring:

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

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

25 (iii) when the appropriation is outside a stream depletion zone, is 35 gallons a minute or less, and
26 does not exceed 10 acre-feet a year, except that a combined appropriation from the same source by two or
27 more wells or developed springs exceeding 10 acre-feet, regardless of the flow rate, requires a permit; or

28 (iv) when the appropriation is within a stream depletion zone, is 20 gallons a minute or less, and

1 does not exceed 2 acre-feet a year, except that a combined appropriation from the same source by two or more
2 wells or developed springs exceeding this limitation requires a permit.

3 (b) (i) Before appropriating groundwater by means of a well or developed spring pursuant to
4 subsection (3)(a)(iii) or (3)(a)(iv), a person shall file with the department, on a form provided by the department,
5 a correct and complete notice of intent to appropriate groundwater.

6 (ii) The department shall notify the person of any defects in the notice of intent to appropriate
7 groundwater within 10 business days.

8 (iii) A notice of intent to appropriate groundwater that is not corrected and completed within 60
9 days of a notice of defects is terminated.

10 (iv) Within 10 business days of determining that a notice of intent to appropriate groundwater is
11 correct and complete, the department shall review the notice for compliance with subsection (3)(a) and shall
12 authorize or deny the notice of intent to appropriate groundwater. If the department denies the notice of intent to
13 appropriate groundwater, the department shall include the reasons for the denial.

14 (v) Unless extended by the department, an appropriation under subsection (3) must be completed
15 within 5 years from the date the notice of intent to appropriate groundwater is authorized. One extension may
16 be granted by the department for up to 5 additional years. The request for an extension must be filed on a form
17 provided by the department and must demonstrate that progress has been made toward putting the water to
18 beneficial use.

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

22 (ii) Water use by a public water supply system subject to Title 75, chapter 6, part 1, is considered
23 perfected and the appropriation of water for beneficial use complete when construction of the public water
24 supply system is finished, at which time a notice of completion may be filed and must include a copy of the
25 approval of the public water supply system by the department of environmental quality. All water use by a public
26 water supply system pursuant to subsection (3)(a)(iii) or (3)(a)(iv) must be measured using a totalizing metering
27 device, and measurements must be reported annually on a form prescribed by the department. Noncompliance
28 with metering and reporting requirements may result in a fine determined by the department.

1 (iii) On receipt of the notice of completion, the department shall review the notice and may, before
 2 issuing a certificate of water right, return a defective notice for correction or completion, together with the
 3 reasons for returning it. A correct and complete notice of completion for an appropriation under subsection
 4 (3)(a)(iii) or (3)(a)(iv) must establish that the appropriation was completed in substantial accordance with the
 5 notice of intent to appropriate groundwater authorized by the department under subsection (3)(b). A notice does
 6 not lose priority of filing because of defects if the notice is corrected, completed, and refiled with the department
 7 within 60 days of notification of defects.

8 (iv) If a notice is not corrected and completed within the time allowed, the department authorization
 9 expires and a new notice of intent to appropriate groundwater is required to use water under subsection
 10 (3)(a)(iii) or (3)(a)(iv).

11 (d) A certificate of water right may not be issued until a correct and complete notice has been filed
 12 with the department, including proof of landowner notification or a written federal special use authorization as
 13 necessary under subsection (1). The original of the certificate must be sent to the appropriator and a duplicate
 14 must be maintained in the department's centralized database. The date of filing of the notice of completion is
 15 the date of priority of the right.

16 (4) (a) For appropriations completed after [the effective date of this act], the water appropriated
 17 under subsection (3)(a)(iii) or (3)(a)(iv) must be measured and reported annually to the department. A totalizing
 18 metering device must be used and the measurements must be reported annually on a form provided by the
 19 department.

20 (b) An appropriator of ground water under subsection (3)(a)(iii) or (3)(a)(iv) may request a variance
 21 from the measuring and reporting requirements of subsection (4)(a). The appropriator shall submit...???

22 ~~(4)(5)~~ An appropriator of ground water by means of a well or developed spring first put to beneficial
 23 use between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in
 24 force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in
 25 subsection (3), with the department to perfect the water right. The filing of a claim pursuant to 85-2-221 is
 26 sufficient notice of completion under this subsection. The priority date of the appropriation is the date of the
 27 filing of a notice, as provided in subsection (3), or the date of the filing of the claim of existing water right.

28 ~~(5)(6)~~ An appropriation under subsection ~~(4)(5)~~ is an existing right, and a permit is not required.

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

5 ~~(6)(7)~~ A permit is not required before constructing an impoundment or pit and appropriating water for
6 use by livestock if:

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

13 ~~(7)(8)~~ (a) Within 60 days after constructing an impoundment or pit, the appropriator shall apply for a
14 permit as prescribed by this part. Subject to subsection ~~(7)(8)~~(b), upon receipt of a correct and complete
15 application for a stock water provisional permit, the department shall automatically issue a provisional permit. If
16 the department determines after a hearing that the rights of other appropriators have been or will be adversely
17 affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make
18 the permit subject to terms, conditions, restrictions, or limitations that it considers necessary to protect the rights
19 of other appropriators.

20 (b) If the impoundment or pit is on national forest system lands, an application is not correct and
21 complete under this section until the applicant has submitted proof of any written special use authorization
22 required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion,
23 impoundment, storage, transportation, withdrawal, use, or distribution of water under the permit.

24 ~~(8)(9)~~ A person may also appropriate water without applying for or prior to receiving a permit under
25 rules adopted by the department under 85-2-113.

26 ~~(9)(10)~~ Pursuant to 85-20-1902, the provisions of this section do not apply within the exterior
27 boundaries of the Flathead Indian reservation."
28

1 **Section 6.** Section 85-2-311, MCA, is amended to read:

2 **"85-2-311. Criteria for issuance of permit.** (1) A permit may be issued under this part prior to the
3 adjudication of existing water rights in a source of supply. In a permit proceeding under this part, there is no
4 presumption that an applicant for a permit cannot meet the statutory criteria of this section prior to the
5 adjudication of existing water rights pursuant to this chapter. In making a determination under this section, the
6 department may not alter the terms and conditions of an existing water right or an issued certificate, permit, or
7 state water reservation. Except as provided in subsections (3) and (4), the department shall issue a permit if the
8 applicant proves by a preponderance of evidence that the following criteria are met:

9 (a) (i) there is water physically available at the proposed point of diversion in the amount that the
10 applicant seeks to appropriate; and

11 (ii) water can reasonably be considered legally available during the period in which the applicant
12 seeks to appropriate, in the amount requested, based on the records of the department and other evidence
13 provided to the department. Legal availability is determined using an analysis involving the following factors:

14 (A) identification of physical water availability;

15 (B) identification of existing legal demands of water rights on the source of supply throughout the
16 area of potential impact by the proposed use; and

17 (C) analysis of the evidence on physical water availability and the existing legal demands of water
18 rights, including but not limited to a comparison of the physical water supply at the proposed point of diversion
19 with the existing legal demands of water rights on the supply of water.

20 (b) the water rights of a prior appropriator under an existing water right, a certificate, a permit, or a
21 state water reservation will not be adversely affected. In this subsection (1)(b), adverse effect must be
22 determined based on a consideration of an applicant's plan for the exercise of the permit that demonstrates that
23 the applicant's use of the water will be controlled so the water right of a prior appropriator will be satisfied. An
24 applicant is not required to prove a lack of adverse effect for any water right identified in a written consent to
25 approval filed pursuant to subsection (9) in connection with a permit application.

26 (c) the proposed means of diversion, construction, and operation of the appropriation works are
27 adequate;

28 (d) the proposed use of water is a beneficial use;

1 (e) the applicant has a possessory interest or the written consent of the person with the
2 possessory interest in the property where the water is to be put to beneficial use, or if the proposed use has a
3 point of diversion, conveyance, or place of use on national forest system lands, the applicant has any written
4 special use authorization required by federal law to occupy, use, or traverse national forest system lands for the
5 purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the
6 permit;

7 (f) the water quality of a prior appropriator will not be adversely affected;

8 (g) the proposed use will be substantially in accordance with the classification of water set for the
9 source of supply pursuant to 75-5-301(1); and

10 (h) the ability of a discharge permit holder to satisfy effluent limitations of a permit issued in
11 accordance with Title 75, chapter 5, part 4, will not be adversely affected; and

12 (i) for any permit issued after [the effective date of this act], the water appropriated will be
13 measured and reported annually to the department. A totalizing metering device must be used and the
14 measurements must be reported annually on a form provided by the department.

15 (2) The applicant is required to prove that the criteria in subsections (1)(f) through (1)(h) have been
16 met only if a valid objection is filed. A valid objection must contain substantial credible information establishing
17 to the satisfaction of the department that the criteria in subsection (1)(f), (1)(g), or (1)(h), as applicable, may not
18 be met. For the criteria set forth in subsection (1)(g), only the department of environmental quality or a local
19 water quality district established under Title 7, chapter 13, part 45, may file a valid objection.

20 (3) The department may not issue a permit for an appropriation of 4,000 or more acre-feet of water
21 a year and 5.5 or more cubic feet per second of water unless the applicant proves by clear and convincing
22 evidence that:

23 (a) the criteria in subsection (1) are met;

24 (b) the proposed appropriation is a reasonable use. A finding must be based on a consideration of
25 the following:

26 (i) the existing legal demands of water rights on the state water supply, as well as projected legal
27 demands of water rights, such as reservations of water for future beneficial purposes, including municipal water
28 supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic

1 life;

2 (ii) the benefits to the applicant and the state;

3 (iii) the effects on the quantity and quality of water for existing beneficial uses in the source of
4 supply;

5 (iv) the availability and feasibility of using low-quality water for the purpose for which application
6 has been made;

7 (v) the effects on private property rights by any creation of or contribution to saline seep; and

8 (vi) the probable significant adverse environmental impacts of the proposed use of water as
9 determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

10 (4) (a) The state of Montana has long recognized the importance of conserving its public waters
11 and the necessity to maintain adequate water supplies for the state's water requirements, including
12 requirements for federal non-Indian and Indian reserved water rights held by the United States for federal
13 reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of
14 Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public
15 waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the criteria in
16 this subsection (4) must be met before out-of-state use may occur.

17 (b) The department may not issue a permit for the appropriation of water for withdrawal and
18 transportation for use outside the state unless the applicant proves by clear and convincing evidence that:

19 (i) depending on the volume of water diverted or consumed, the applicable criteria and
20 procedures of subsection (1) or (3) are met;

21 (ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

22 (iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the
23 citizens of Montana.

24 (c) In determining whether the applicant has proved by clear and convincing evidence that the
25 requirements of subsections (4)(b)(ii) and (4)(b)(iii) are met, the department shall consider the following factors:

26 (i) whether there are present or projected water shortages within the state of Montana;

27 (ii) whether the water that is the subject of the application could feasibly be transported to alleviate
28 water shortages within the state of Montana;

1 (iii) the supply and sources of water available to the applicant in the state where the applicant
2 intends to use the water; and

3 (iv) the existing legal demands of water rights placed on the applicant's supply in the state where
4 the applicant intends to use the water.

5 (d) When applying for a permit or a lease to withdraw and transport water for use outside the state,
6 the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation,
7 lease, and use of water.

8 (5) Subject to 85-2-360, to meet the preponderance of evidence standard in this section, the
9 applicant, in addition to other evidence demonstrating that the criteria of subsection (1) have been met, shall
10 submit hydrologic or other evidence, including but not limited to water supply data, field reports, and other
11 information developed by the applicant, the department, the U.S. geological survey, or the U.S. natural
12 resources conservation service and other specific field studies.

13 (6) An appropriation, diversion, impoundment, use, restraint, or attempted appropriation, diversion,
14 impoundment, use, or restraint contrary to the provisions of this section is invalid. An officer, agent, agency, or
15 employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized appropriation,
16 diversion, impoundment, use, or other restraint. A person or corporation may not, directly or indirectly,
17 personally or through an agent, officer, or employee, attempt to appropriate, divert, impound, use, or otherwise
18 restrain or control waters within the boundaries of this state except in accordance with this section.

19 (7) The department may adopt rules to implement the provisions of this section.

20 (8) For an application for ground water in a basin closed pursuant to 85-2-319, 85-2-321, 85-2-
21 330, 85-2-336, 85-2-341, 85-2-343, or 85-2-344, the applicant shall comply with the provisions of 85-2-360 in
22 addition to the requirements of this section.

23 (9) The department may not conduct an adverse effects analysis on a water right if the water right
24 holder files a written consent to approval of an application for a permit."

25

26 **Section 7.** Section 85-2-506, MCA, is amended to read:

27 **"85-2-506. Controlled ground water areas -- designation or modification.** (1) The department may
28 by rule designate or modify permanent or temporary controlled ground water areas as provided in this part. The

1 rule for each controlled ground water area must designate the boundaries of the controlled ground water area.

2 (2) The rulemaking process for designation or modification of a controlled ground water area may
3 be initiated by:

4 (a) the department;

5 (b) submission of a correct and complete petition from a state or local public health agency for
6 identified public health risks; or

7 (c) submission of a correct and complete petition:

8 (i) by a municipality, county, conservation district, or local water quality district formed under Title
9 7, chapter 13, part 45; or

10 (ii) signed by at least one-third of the water right holders in a proposed controlled ground water
11 area.

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

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

16 (ii) describe proposed measures, if any, to mitigate effects of the criteria identified in subsection (5)
17 that are alleged in the petition.

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

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

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

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

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

28 (ii) inform the petitioner that the department will study the information presented in the petition for

1 a period not to exceed 90 days before denying or proceeding with the petition; or

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

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

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

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

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

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

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

21 (5) The department may designate a permanent controlled ground water area by rule if it finds by a
22 preponderance of the evidence that any of the following criteria have been met and cannot be appropriately
23 mitigated:

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

27 (b) current or projected ground water withdrawals from the aquifer or aquifers in the proposed
28 controlled ground water area have reduced or will reduce ground water levels or surface water availability

1 necessary for water right holders to reasonably exercise their water rights;

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

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

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

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

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

17 (b) A temporary controlled ground water area designation is for the purpose of study and cannot
18 include the control provisions provided in subsection (7), other than measurement, water quality testing, and
19 reporting requirements.

20 (c) A temporary controlled ground water area designation may not exceed a total of 6 years,
21 including any extensions.

22 (d) Prior to expiration of a temporary controlled ground water area, the department may amend or
23 repeal the rule establishing the temporary controlled ground water area or may designate a permanent
24 controlled ground water area through the rulemaking process under this section.

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

27 (f) If there is a ground water investigation program within the bureau, the ground water
28 assessment steering committee established by 2-15-1523 shall consider temporary controlled ground water

1 areas for study.

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

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

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

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

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

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

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

15 (g) a provision for water quality testing;

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

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

19 (8) Control provisions for a controlled ground water area must include but is not limited to requiring
20 metering and reporting for all new water right and authorizations pursuant to 85-2-306, 85-2-311, and 85-2-402
21 in controlled ground water areas. A totalizing metering device must be used, and measurements must be
22 reported annually on a form provided by the department.

23 ~~(8)(9)~~ Pursuant to 85-20-1902, the provisions of this section do not apply within the exterior
24 boundaries of the Flathead Indian reservation."

25 - END -