

SENATE BILL 426

Introduced by Grosfield, et al.

2/18	Introduced
2/18	First Reading
2/18	Referred to Natural Resources
2/18	Fiscal Note Requested
2/22	Hearing
2/23	Fiscal Note Printed
2/23	Committee Report--Bill Passed
2/23	Fiscal Note Received
2/25	2nd Reading Passed
2/26	3rd Reading Passed
	Transmitted to House
3/04	First Reading
3/04	Referred to Natural Resources
3/21	Hearing
4/02	Tabled in Committee

1 *Senate* BILL NO. *426*  
 2 INTRODUCED BY *Groff* *W. Bennett* *William Benedict*  
 3 *of Detouring* *CD*  
 4 *Pass out* A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE WATER  
 5 RESERVATION PROCESS FOR FEDERALLY DESIGNATED WILDERNESS  
 6 AREAS; AND AMENDING SECTION 85-2-316, MCA."

7  
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 **Section 1.** Section 85-2-316, MCA, is amended to read:

10 **"85-2-316. Reservation of waters.** (1) The state or any  
11 political subdivision or agency thereof or the United States  
12 or any agency thereof may apply to the board to reserve  
13 waters for existing or future beneficial uses or to maintain  
14 a minimum flow, level, or quality of water throughout the  
15 year or at periods or for a length of time as the board  
16 designates.

17 (2) (a) Water may be reserved for existing or future  
18 beneficial uses in the basin where it is reserved, as  
19 described by the following basins:

20 (i) the Clark Fork River and its tributaries to its  
21 confluence with Lake Pend Oreille in Idaho;

22 (ii) the Kootenai River and its tributaries to its  
23 confluence with Kootenay Lake in British Columbia;

24 (iii) the St. Mary River and its tributaries to its  
25 confluence with the Oldman River in Alberta;

1 (iv) the Little Missouri River and its tributaries to  
2 its confluence with Lake Sakakawea in North Dakota;

3 (v) the Missouri River and its tributaries to its  
4 confluence with the Yellowstone River in North Dakota; and

5 (vi) the Yellowstone River and its tributaries to its  
6 confluence with the Missouri River in North Dakota.

7 (b) A water reservation may be made for an existing or  
8 future beneficial use outside the basin where the diversion  
9 occurs only if stored water is not reasonably available for  
10 water leasing under 85-2-141 and the proposed use would  
11 occur in a basin designated in subsection (2)(a).

12 (3) Upon receiving an application, the department shall  
13 proceed in accordance with 85-2-307 through 85-2-309. After  
14 the hearing provided in 85-2-309, the board shall decide  
15 whether to reserve the water for the applicant. The  
16 department's costs of giving notice, holding the hearing,  
17 conducting investigations, and making records incurred in  
18 acting upon the application to reserve water, except the  
19 cost of salaries of the department's personnel, must be paid  
20 by the applicant. In addition, a reasonable proportion of  
21 the department's cost of preparing an environmental impact  
22 statement must be paid by the applicant unless waived by the  
23 department upon a showing of good cause by the applicant.

24 (4) (a) The board may not adopt an order reserving  
25 water unless the applicant establishes to the satisfaction



1 of the board:

2 (i) the purpose of the reservation;

3 (ii) the need for the reservation;

4 (iii) the amount of water necessary for the purpose of  
5 the reservation;

6 (iv) that the reservation is in the public interest.

7 (b) In determining the public interest under subsection  
8 (4)(a)(iv), the board may not adopt an order reserving water  
9 for withdrawal and transport for use outside the state  
10 unless the applicant proves by clear and convincing evidence  
11 that:

12 (i) the proposed out-of-state use of water is not  
13 contrary to water conservation in Montana; and

14 (ii) the proposed out-of-state use of water is not  
15 otherwise detrimental to the public welfare of the citizens  
16 of Montana.

17 (c) In determining whether the applicant has proved by  
18 clear and convincing evidence that the requirements of  
19 subsections (4)(b)(i) and (4)(b)(ii) are met, the board  
20 shall consider the following factors:

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

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

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

4 (iv) the demands placed on the applicant's supply in the  
5 state where the applicant intends to use the water.

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

11 (5) If the purpose of the reservation requires  
12 construction of a storage or diversion facility, the  
13 applicant shall establish to the satisfaction of the board  
14 that there will be progress toward completion of the  
15 facility and accomplishment of the purpose with reasonable  
16 diligence in accordance with an established plan.

17 (6) Except for an application by a federal agency for a  
18 water reservation as a result of a federal wilderness  
19 designation, The the board shall limit any reservations  
20 after May 9, 1979, for maintenance of minimum flow, level,  
21 or quality of water that it awards at any point on a stream  
22 or river to a maximum of 50% of the average annual flow of  
23 record on gauged streams. Ungauged streams can be allocated  
24 at the discretion of the board.

25 (7) After the adoption of an order reserving waters,

1 the department may reject an application and refuse a permit  
 2 for the appropriation of reserved waters or may, with the  
 3 approval of the board, issue the permit subject to terms and  
 4 conditions it considers necessary for the protection of the  
 5 objectives of the reservation.

6 (8) Any person desiring to use water reserved to a  
 7 conservation district for agricultural purposes shall make  
 8 application for the use with the district, and the district,  
 9 upon approval of the application, shall inform the  
 10 department of the approved use. The department shall  
 11 maintain records of all uses of water reserved to  
 12 conservation districts and be responsible, when requested by  
 13 the districts, for rendering technical and administrative  
 14 assistance within the department's staffing and budgeting  
 15 limitations in the preparation and processing of such  
 16 applications for the conservation districts. The department  
 17 shall, within its staffing and budgeting limitations,  
 18 complete any feasibility study requested by the districts  
 19 within 12 months of the time the request was made. The board  
 20 shall extend the time allowed to develop a plan identifying  
 21 projects for utilizing a district's reservation so long as  
 22 the conservation district makes a good faith effort, within  
 23 its staffing and budget limitations, to develop a plan.

24 (9) Except as provided in 85-2-331, the priority of  
 25 appropriation of a water reservation and the relative

1 priority of the reservation to permits with a later priority  
 2 of appropriation must be determined according to this  
 3 subsection (9).

4 (a) A reservation under this section has a priority of  
 5 appropriation dating from the filing with the department of  
 6 a notice of intention to apply for a water reservation in a  
 7 basin in which no other notice of intention to apply is  
 8 currently pending. The notice of intention to apply must  
 9 specify the basin in which the applicant is seeking a  
 10 reservation. For an application by a federal agency for a  
 11 water reservation as a result of a federal wilderness  
 12 designation, the date of the federal act designating the  
 13 wilderness area is the priority date of appropriation unless  
 14 the federal act establishes a specific later priority date  
 15 of appropriation.

16 (b) Upon receiving a notice of intention to apply for a  
 17 water reservation or upon enactment of a federal act  
 18 designating a wilderness area, the department shall identify  
 19 all potential water reservation applicants in the basin  
 20 specified in the notice or affected by the wilderness  
 21 designation and shall within 90 days notify each potential  
 22 applicant of the opportunity to submit an application and to  
 23 receive a reservation with the priority of appropriation as  
 24 described in subsection (9)(a).

25 (c) To receive the priority of appropriation described

1 in subsection (9)(a), the applicant shall submit a correct  
 2 and complete water reservation application within 1 year  
 3 after the filing of the notice of intention to apply. Upon a  
 4 showing of good cause, the board may extend the time for  
 5 preparing the application.

6 (d) Except for a reservation granted to a federal  
 7 agency as a result of federal wilderness designation, The  
 8 the board may by order subordinate a water reservation to a  
 9 permit issued pursuant to this part if:

10 (i) the permit application was accepted by the  
 11 department before the date of the board order granting the  
 12 reservation; and

13 (ii) the effect of subordinating the reservation to one  
 14 or more permits does not interfere substantially with the  
 15 purpose of the reservation.

16 (e) The board shall by order establish the relative  
 17 priority of reservations approved under this section that  
 18 have the same day of priority. A reservation may not  
 19 adversely affect any rights in existence at that time.

20 (10) The board shall, periodically but at least once  
 21 every 10 years, review existing reservations to ensure that  
 22 the objectives of the reservation are being met. Where the  
 23 objectives of the reservation are not being met, or, in the  
 24 case of a reservation granted to a federal agency as a  
 25 result of a federal wilderness designation, where the

1 objectives of the reservation have been altered, amended, or  
 2 repealed as a result of an act of congress, the board may  
 3 extend, revoke, or modify the reservation.

4 (11) (a) Except as provided in subsection (11)(b), The  
 5 the board may modify an existing or future order originally  
 6 adopted to reserve water for the purpose of maintaining  
 7 minimum flow, level, or quality of water, so as to  
 8 reallocate the reservation or portion of the reservation to  
 9 an applicant who is a qualified reservant under this  
 10 section. Reallocation of reserved water may be made by the  
 11 board following notice and hearing wherein the board finds  
 12 that all or part of the reservation is not required for its  
 13 purpose and that the need for the reallocation has been  
 14 shown by the applicant to outweigh the need shown by the  
 15 original reservant. Reallocation of reserved water may not  
 16 adversely affect the priority date of the reservation, and  
 17 the reservation shall retain its priority date despite  
 18 reallocation to a different entity for a different use. The  
 19 board may not reallocate water reserved under this section  
 20 on any stream or river more frequently than once every 5  
 21 years.

22 (b) For a water reservation granted to a federal agency  
 23 as a result of a federal wilderness designation, the board  
 24 may not reallocate the reservation or any portion of the  
 25 reservation except at the request of the federal agency

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1 holding the reservation.

2 (12) Nothing in this section vests the board with the  
3 authority to alter a water right that is not a reservation.

4 (13) The department shall undertake a program to educate  
5 the public, other state agencies, and political subdivisions  
6 of the state as to the benefits of the reservation process  
7 and the procedures to be followed to secure the reservation  
8 of water. The department shall provide technical assistance  
9 to other state agencies and political subdivisions in  
10 applying for reservations under this section.

11 (14) Water reserved under this section is not subject to  
12 the state water leasing program established under 85-2-141."

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0426, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:


An act clarifying the water reservation process for federally designated wilderness areas.

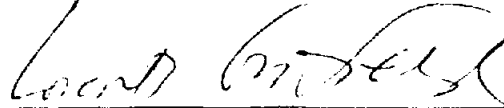
ASSUMPTIONS:

1. The DNRC assumes no fiscal impact until a new wilderness bill passes in Congress that explicitly includes language indicating that no reserved water rights were created with the designation. If this does occur, the greatest proportion of the DNRC cost to process a reservation application will be borne by the applicant.

FISCAL IMPACT:

None.

  
ROD SUNDSTED, BUDGET DIRECTOR      2-22-91  
Office of Budget and Program Planning      DATE

  
LORENTS GROSFIELD, PRIMARY SPONSOR      FEB 23 1991      DATE  
Fiscal Note for SB0426, as introduced      **SB 426**

APPROVED BY COMM. ON  
NATURAL RESOURCES

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*Senate* BILL NO. *426*  
*Groshel* INTRODUCED BY *William Benedict*  
*Robert* *Post*

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE WATER RESERVATION PROCESS FOR FEDERALLY DESIGNATED WILDERNESS AREAS; AND AMENDING SECTION 85-2-316, MCA."

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

**Section 1.** Section 85-2-316, MCA, is amended to read:

"85-2-316. Reservation of waters. (1) The state or any political subdivision or agency thereof or the United States or any agency thereof may apply to the board to reserve waters for existing or future beneficial uses or to maintain a minimum flow, level, or quality of water throughout the year or at periods or for a length of time as the board designates.

(2) (a) Water may be reserved for existing or future beneficial uses in the basin where it is reserved, as described by the following basins:

(i) the Clark Fork River and its tributaries to its confluence with Lake Pend Oreille in Idaho;

(ii) the Kootenai River and its tributaries to its confluence with Kootenay Lake in British Columbia;

(iii) the St. Mary River and its tributaries to its confluence with the Oldman River in Alberta;

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(v) the Missouri River and its tributaries to its confluence with the Yellowstone River in North Dakota; and

(vi) the Yellowstone River and its tributaries to its confluence with the Missouri River in North Dakota.

(b) A water reservation may be made for an existing or future beneficial use outside the basin where the diversion occurs only if stored water is not reasonably available for water leasing under 85-2-141 and the proposed use would occur in a basin designated in subsection (2)(a).

(3) Upon receiving an application, the department shall proceed in accordance with 85-2-307 through 85-2-309. After the hearing provided in 85-2-309, the board shall decide whether to reserve the water for the applicant. The department's costs of giving notice, holding the hearing, conducting investigations, and making records incurred in acting upon the application to reserve water, except the cost of salaries of the department's personnel, must be paid by the applicant. In addition, a reasonable proportion of the department's cost of preparing an environmental impact statement must be paid by the applicant unless waived by the department upon a showing of good cause by the applicant.

(4) (a) The board may not adopt an order reserving water unless the applicant establishes to the satisfaction



1 of the board:

- 2 (i) the purpose of the reservation;  
 3 (ii) the need for the reservation;  
 4 (iii) the amount of water necessary for the purpose of  
 5 the reservation;  
 6 (iv) that the reservation is in the public interest.

7 (b) In determining the public interest under subsection  
 8 (4)(a)(iv), the board may not adopt an order reserving water  
 9 for withdrawal and transport for use outside the state  
 10 unless the applicant proves by clear and convincing evidence  
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- 12 (i) the proposed out-of-state use of water is not  
 13 contrary to water conservation in Montana; and  
 14 (ii) the proposed out-of-state use of water is not  
 15 otherwise detrimental to the public welfare of the citizens  
 16 of Montana.

17 (c) In determining whether the applicant has proved by  
 18 clear and convincing evidence that the requirements of  
 19 subsections (4)(b)(i) and (4)(b)(ii) are met, the board  
 20 shall consider the following factors:

- 21 (i) whether there are present or projected water  
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 21 or quality of water that it awards at any point on a stream  
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 23 record on gauged streams. Ungauged streams can be allocated  
 24 at the discretion of the board.

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 4 conditions it considers necessary for the protection of the  
 5 objectives of the reservation.

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 7 conservation district for agricultural purposes shall make  
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 17 shall, within its staffing and budgeting limitations,  
 18 complete any feasibility study requested by the districts  
 19 within 12 months of the time the request was made. The board  
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 21 projects for utilizing a district's reservation so long as  
 22 the conservation district makes a good faith effort, within  
 23 its staffing and budget limitations, to develop a plan.

24 (9) Except as provided in 85-2-331, the priority of  
 25 appropriation of a water reservation and the relative

1 priority of the reservation to permits with a later priority  
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 23 receive a reservation with the priority of appropriation as  
 24 described in subsection (9)(a).

25 (c) To receive the priority of appropriation described

1 in subsection (9)(a), the applicant shall submit a correct  
2 and complete water reservation application within 1 year  
3 after the filing of the notice of intention to apply. Upon a  
4 showing of good cause, the board may extend the time for  
5 preparing the application.

6 (d) Except for a reservation granted to a federal  
7 agency as a result of federal wilderness designation, The  
8 the board may by order subordinate a water reservation to a  
9 permit issued pursuant to this part if:

10 (i) the permit application was accepted by the  
11 department before the date of the board order granting the  
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13 (ii) the effect of subordinating the reservation to one  
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15 purpose of the reservation.

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25 result of a federal wilderness designation, where the

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7 minimum flow, level, or quality of water, so as to  
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11 board following notice and hearing wherein the board finds  
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1 holding the reservation.

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3 authority to alter a water right that is not a reservation.

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5 the public, other state agencies, and political subdivisions  
6 of the state as to the benefits of the reservation process  
7 and the procedures to be followed to secure the reservation  
8 of water. The department shall provide technical assistance  
9 to other state agencies and political subdivisions in  
10 applying for reservations under this section.

11 (14) Water reserved under this section is not subject to  
12 the state water leasing program established under 85-2-141."

-End-

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*Senate* BILL NO. *426*  
*Grasfield* *W. Bennett* *William Benedict*  
*Perman* *COB*

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE WATER RESERVATION PROCESS FOR FEDERALLY DESIGNATED WILDERNESS AREAS; AND AMENDING SECTION 85-2-316, MCA."

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

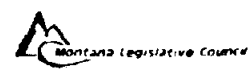
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- (i) the Clark Fork River and its tributaries to its confluence with Lake Pend Oreille in Idaho;
- (ii) the Kootenai River and its tributaries to its confluence with Kootenai Lake in British Columbia;
- (iii) the St. Mary River and its tributaries to its confluence with the Oldman River in Alberta;

There are no changes in this bill, and will not be reprinted. Please refer to yellow copy for complete text.



-2-  
THIRD READING  
SB 426