

MINUTES OF THE SELECT COMMITTEE ON WATER
February 5, 1981

The Water Committee convened on Thursday, February 5, 1981 at 1:00 p.m. in Room 436 of the Capitol with CHAIRMAN AUDREY ROTH presiding. All members were present except for REPS. BRIGGS, McLANE and HUENNEKENS.

Chairman ROTH announced that the meetings may have to be scheduled at a different time in the future so that more members could be present.

HB 494. REP. CURTISS opened the hearing on HB 494. She stated that she sponsored the bill because of the concern shared by Conservation Districts that the Board of Natural Resources could withdraw the reservation they have along the Yellowstone River. Changes from the present law are on page 3, lines 12, 15 and 16 through 22.

PROPONENTS:

RAY BECK of the Association of Conservation Districts feels that the wording on HB 494 is a necessary addition to Montana law. (EXHIBIT I) CHARLIE CRANE, representing the Montana Water Development Association, urged a Do Pass recommendation for this bill. He stated that the time frame built into the bill would greatly help a Water Conservation District. PETER JACKSON, of Harrison, Montana, stated that he has served in many capacities in a Conservation District and feels this bill will help the personnel. PAT OSBORNE of the Northern Plains Resource Council said he is especially interested in the expansion of water for irrigation purposes in Eastern Montana. HB 494 will clarify the relationship between the DNR and the Conservation Districts. He told of a request for water for irrigation. The person was told by the supervisor of the Dawson County Conservation District that it was very likely the water right would be granted. Papers were drawn up, but assistance was postponed by the department who said it had neither the time nor the money. Nothing has been done to this date to help the man, a Mr. Heinbuck. MR. OSBORNE feels the lack of assistance from the department is stifling development. LEO BERRY of the DNR supported the idea of HB 494 saying some portions aren't really necessary regarding the extension of time. He said that in order to provide the requested assistance, an additional funding of approximately \$200,000 for the biennium to do the feasibility studies and to set up an administrative mechanism. If funds are not made available, the DNR will then have to oppose the bill.

OPPONENTS:

There were none.

QUESTIONS FROM THE COMMITTEE:

REP. CONROY asked if the time frame could be extended at the present time. LEO BERRY said that the DNR has always been receptive to requests of the Conservation Districts. The portion of the bill that directs the agency to provide assistance to the Conservation Districts will cost additional money. REP. CONROY said that was a lot of money and asked how many requests for assistance that Berry expected. LEO BERRY said that was difficult to estimate. If people knew the service was available there possibly would be many, he said. The DNR has requested additional money in this legislature for two additional staff members to assist the Conservation Districts in preparing requests for future reservations, not those that exist now. GARY FRITZ said this was part of the Governor's Water Development package. CHAIRMAN ROTH asked what this bill would require of the DNR. FRITZ said that it would be required to do engineering feasibility studies, so that when people came to the board they could have their permits approved. Also, they would be required to set up an administration process. LEO BERRY said that the additional people requested are to handle the Clark Fork applications and to help the existing Yellowstone reservation. GARY FRITZ said additional rules are needed to "divvy up" the reserved water within the districts. PETER JACKSON said Conservation Districts are not state or government agencies and have special problems. When water adjudication was brought into the picture, Conservation Districts had to get involved. They now need a feasibility study to decide what to do with the water. Some CDs have only \$4,000 or \$5,000 budgets, and big responsibilities. REP. CONROY asked what would be done with additional money by the Soil CDs. RAY BECK of the MACD said it was set up mainly for district operations. LEO BERRY said the money in the Water Development Act was just designed to help the districts on the Clark Fork. If this bill passes, the DNR would be helping the Yellowstone or any other reservations. The money referenced in 223 state that the CDs would have to apply for a grant for their projects. Under Schultz' bill, the DNR would handle the money, he said. REP. NEUMAN asked how it would be possible if the bill would require of the DNRC (on page 3, line 17) that the studies to be done within 12 months, if several CDs applied for assistance. LEO BERRY said that problem could occur. REP. KEMMIS asked about the relationship between this and REP. SCHULTZ' bill. Under Schultz' bill, he said, a Conservation District could apply for a grant; under HB 494, the DNR is instructed to complete feasibility studies and to assist in processing applications. He feels that there could be a problem in forcing CDs to apply for a grant to pay for what the DNR has been directed to pay for. LEO BERRY feels the language might have to be changed.

REP. CURTISS referred to language on page 4, line 2, regarding review. She then closed the hearing.

EXECUTIVE SESSION:

HB 324. In asking for reconsideration of the bill, REP. CONROY stated that water was critical last year in eastern Montana, and expects many people to construct water impoundments. REP. ASAY who previously opposed the bill stated he would also like to reconsider the bill. REP. NEUMAN said that the problem is more in the permitting process, but if these dams are not put in correctly, drownings could occur. He feels the permitting process should be speeded up, not eliminated. REP. CURTISS asked if Rep. Neuman was concerned even though the bill refers to other than a perennially flowing stream. REP. NEUMAN said he was not sold on exempting any stream. REP. THOFT expressed concern about the effect these dams will have on decreed water rights. REP. CONROY said off-stream water storage must be considered to help the water supply for everyone. CHAIRMAN ROTH stated that these reservoirs are only expeditious during the spring to hold runoff. REP. THOFT felt that problems were diverse between eastern Montana and western Montana. Seepage was one of the problems. REP. CONROY stated that the SCS has not always been able to define soil conditions correctly. REP. KEMMIS stated that this bill gives more rights to the possibly affected neighbors. GARY FRITZ said that 1,500 permits have been issued; there have been no complaints on 85%, and no dams have had to be taken out. REP. CONROY moved for RECONSIDERATION OF HB 324 AS AMENDED. it was seconded and PASSED.

REP. KEMMIS moved that the word "may" be changed to "shall" in two places. REP. CONROY opposed that amendment on the grounds that it would cause a great many people to complain. REP. HUENNEKENS agreed with REP. KEMMIS' proposed amendment. REP. KEMMIS said it would either require modification or change. REP. KEMMIS' motion FAILED.

REP. CONROY moved that HB 324 DO PASS AS AMENDED at the previous Water Committee meeting on January 3, 1981. The motion was seconded and PASSED UNANIMOUSLY.

HB 194. REP. CONROY moved for a DO NOT PASS. It was seconded by REP. ASAY, and PASSED UNANIMOUSLY.

SB 59. REP. CURTISS moved for a DO PASS. REP. HUENNEKENS asked if this legislation would have general applicability. REP. ASAY felt it would apply to a great many. REP. McLANE felt it would help many. REP. THOFT thought it was generally good. REP. NEUMAN brought up the "40 acre" reference in the bill. He

thought the shape of the 40 acres might greatly affect neighbors in construction of a pond. Others on the committee agreed. REP. CONROY said that terrain often dictates the location of a pond. He also mentioned that sometimes neighbors might like to share a pond on two property lines, or that one might like to place his pond along his property line. REP. CONROY brought up the property affected in Senator Brown's testimony.

A vote was taken on REP. CURTISS' motion for DO PASS. The motion failed by a vote of 4 to 5. Those dissenting were REPS. THOFT, KEMMIS, CONROY, NEUMAN, HUENNEKENS. REP. KEMMIS moved that the motion and the vote be reversed to a DO NOT PASS. The motion carried, and the bill was not concurred in by a vote of 5 to 4 with REPS. ROTH, CURTISS, McLANE and ASAY dissenting.

The meeting was adjourned.



AUDREY ROTH, CHAIRMAN

ry

COMMITTEE

Water

COMMITTEE

Date 2-5-81

Def. Curtis

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

HOUSE BILL 494

Testimony of the Department of Natural Resources and Conservation

AN ACT TO REQUIRE THE BOARD OF NATURAL RESOURCES AND CONSERVATION
TO ALLOW ADEQUATE TIME FOR A CONSERVATION DISTRICT TO DEVELOP A PLAN
TO UTILIZE ITS RESERVATION OF WATER; TO REQUIRE THE DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION TO COMPLY WITH A REQUEST FOR ASSISTANCE
BY A DISTRICT WITHIN 12 MONTHS; AMENDING SECTION 85-2-316, MCA.

The Department supports the concept of this bill; that is, the conservation districts in the Yellowstone River Basin should have ample time to develop their water reservations. Of course the Board of Natural Resources has the authority to extend time limits for project development. The Board has always indicated a strong desire to see the irrigation reservations developed and a willingness to extend deadlines if necessary.

The Department has always demonstrated a commitment to assisting conservation districts in developing water. The applications for water reservations by the conservation districts in the Yellowstone Basin were funded by the Department. The Department has continually expressed support for the conservation districts in developing their water reservations and, in fact, funding to do just that is part of the Governor's water development program. That program would be funded by a variety of sources including coal severance tax, water project revenues and interest from the resource indemnity trust fund.

The Department cannot, however, support a bill which seeks to give us significant additional responsibilities but does not provide the necessary funding. The fiscal impact of this bill is estimated to be \$200,000 for the 82-83 biennium.



Montana Association Of Conservation Districts

7 Edwards
Helena, Montana 59601
Ph. 406-443-5711


HB 494

The Montana Association of Conservation Districts (MACD) feel that the wording provided by House Bill 494 which amends section 85-2-316, M.C.A. is a very necessary addition to that particular section of the law.

At the present time there is much confusion with the reservation request procedures. It is very difficult to expand or improve your present farm operation, to obtain financing or develop a water related project if an individual does not know when, how or even if their water use request will be granted.

It is the Montana Association of Conservation Districts' feeling that a time schedule, which is provided by HB 494, will greatly improve the reservation process.

MACD strongly urges a "Do Pass" of HB 494.



Ray Beck
Executive Vice President

*has been away if
AC Reports are OK
2/3/81*

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTION 85-2-306, ~~AND~~
~~85-2-314~~, MCA, TO EXCEPT FROM THE WATER APPROPRIATION PERMIT PROCESS THE
REQUIREMENT FOR APPLICATION FOR A PERMIT PRIOR TO CONSTRUCTING AN
IMPOUNDMENT OR PIT AND APPROPRIATING WATER FOR USE BY LIVESTOCK REGARDLESS
~~OF THE SIZE OF THE IMPOUNDMENT~~ IF THE SOURCE OF WATER IS OTHER THAN A
PERENNIAL FLOWING STREAM, AND ALLOWING FOR A MODIFICATION HEARING IF OTHER
APPROPRIATORS HAVE BEEN ADVERSELY AFFECTED.

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

Section 1. Section 85-2-306, MCA, is amended to read:

"85-2-306. Exceptions to permit requirements. (1) Outside the
boundaries of a controlled groundwater area, a permit is not required
before appropriating groundwater by means of a well with a maximum yield
of less than 100 gallons a minute. Within 60 days of completion of the
well and appropriation of the groundwater for beneficial use, the appropria-
tor shall file notice of completion on a form provided by the department
at its offices and at the offices of the county clerk and recorders. Upon
receipt of the notice, the department shall automatically issue a
certificate of water right. The original of the certificate shall be
sent to the county clerk and recorder in the county where the point
of diversion or place of use is located for recordation. The department
shall keep a copy of the certificate in its office in Helena. After recordation,
the clerk and recorder shall send the certificate to the appropriator. The
date of filing of the notice of completion is the date of priority of the
right.

(2) A permit is not required before constructing an impoundment or
pit and appropriating water for use by livestock if ^{1-9 P2} the ~~maximum capacity of~~
^{610 P2} ~~the impoundment or pit is less than 15-acre-feet and~~ THE MAXIMUM CAPACITY

OF THE IMPOUNDMENT OR PIT IS LESS THAN 15 ACRE-FEET AND the appropriation is from a source other than a perennial flowing stream. ^{SB 59} As used in this subsection, a perennial flowing stream means a stream which historically has flowed continuously at all seasons of the year, during dry as well as wet years. However, before ^{L14 P2} WITHIN 60 DAYS after constructing the impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. ^{L16 P2} UPON RECEIPT OF A CORRECT AND COMPLETE APPLICATION FOR STOCKWATER PROVISIONAL PERMIT THE DEPARTMENT SHALL THEN AUTOMATICALLY ISSUE A PROVISIONAL PERMIT. If the department determines after ^{L17 & L18 P2} processing the application ~~A HEARING UNDER 85-2-314~~ THAT the rights of other appropriators have been or will be adversely affected, it ^{L19 - P2} may REVOKE THE PERMIT OR require the applicant ^{L-19 P2} PERMITEE to modify the construction of the impoundment or pit and ^{L-20 P2} issue MAY THEN MAKE the permit subject to such terms, conditions, restrictions, or limitations it considers necessary to protect the rights of other appropriators. ^{L-22 shall}

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

~~Section 2. Section 85-2-314, MCA, is amended to read:~~

~~"85-2-314. Revocation OR MODIFICATION of permit. If the work on an appropriation is not commenced, prosecuted, or completed within the time stated in the permit or an extension thereof or if the water is not being applied to the beneficial use contemplated in the permit or if the permit is otherwise not being followed, OR OTHER RIGHTS HAVE BEEN ADVERSELY AFFECTED, the department may, after notice, require the permittee to show cause why the permit should not be revoked OR MODIFIED. If the permittee fails to show sufficient cause, the department may revoke OR MODIFY the permit.~~

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HOUSE BILL 494

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The Department cannot, however, support a bill which seeks to give us significant additional responsibilities but does not provide the necessary funding. The fiscal impact of this bill is estimated to be \$2,000,000 for the 82-83 biennium.

880501000

HOUSE BILL NO. 494

INTRODUCED BY

Robert Gray

A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE THE BOARD OF NATURAL RESOURCES AND CONSERVATION TO ALLOW ADEQUATE TIME FOR A CONSERVATION DISTRICT TO DEVELOP A PLAN TO UTILIZE ITS RESERVATION OF WATER; TO REQUIRE THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO COMPLY WITH A REQUEST FOR ASSISTANCE BY A DISTRICT WITHIN 12 MONTHS; 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 such periods or for such length of time as the board designates.

(2) 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, shall be paid by the applicant.

(3) The board may not adopt an order reserving water unless the applicant establishes to the satisfaction of the board:

(a) the purpose of the reservation;

(b) the need for the reservation;

(c) the amount of water necessary for the purpose of the reservation;

(d) that the reservation is in the public interest.

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

(5) The board shall limit any reservations after May 9, 1979, for maintenance of minimum flow, level, or quality of water that it awards at any point on a stream or river to a maximum of 50% of the average annual flow of record on gauged streams. Ungauged streams can be allocated at the discretion of the board.

(6) After the adoption of an order reserving waters,

In this order is "granted"?
DWR or conservation dist?

HB 494
223
2000

Pete Suckson

Leo Brown

Charlie Crane
Ted C. [unclear]

LC 1052/01

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1911 DBC

Board & Dept

LC 1052/01

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

6 (7) Any person desiring to use water reserved to a
7 conservation district for agricultural purposes shall make
8 application for such use with the district, and the district
9 upon approval of the application must inform the department
10 of the approved use. The department shall maintain records
11 of all uses of water reserved to conservation districts and
12 be responsible when requested by the districts for

13 rendering technical and administrative assistance within the
14 department's staffing and budgeting limitations in the
15 preparation and processing of such applications for the
16 conservation districts. The department shall complete any
17 feasibility study requested by the districts within 12
18 months of the time the request was made. (The board shall
19 extend the time allowed to develop a plan identifying
20 projects for utilizing a district's reservation so long as
21 the conservation district makes a good faith effort within
22 its staffing and budget limitations to develop a plan.)

23 (8) A reservation under this section shall date from
24 the date the order reserving the water is adopted by the
25 board and shall not adversely affect any rights in existence

1 at that time.

2 (9) The board shall, periodically but at least once
3 every 10 years, review existing reservations to ensure that
4 the objectives of the reservation are being met. Where the
5 objectives of the reservation are not being met, the board
6 may extend, revoke, or modify the reservation.

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

24 (11) Nothing in this section vests the board with the
25 authority to alter a water right that is not a reservation."