

1 House BILL NO. 797
 2 INTRODUCED BY MULLAR Sully

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ENSURE EFFECTIVE
 5 UTILIZATION OF POTENTIAL OF STATE LANDS IN TRUST TO OBTAIN
 6 FUNDS FOR EDUCATION BY RESERVING LIMITED AMOUNTS OF WATER
 7 NECESSARY FOR THEIR CONTINUED DEVELOPMENT AND APPROPRIATING
 8 FUNDS FOR THESE PURPOSES TO THE DEPARTMENT OF STATE LANDS."

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

11 Section 1. There is a new R.C.M. section numbered
 12 89-890.1 that reads as follows:

13 89-890.1. Findings. (1) The legislature finds that
 14 lands granted by congress to the state of Montana to be held
 15 in trust for the support of education and other worthy
 16 purposes are capable of being cultivated for raising grass,
 17 grain, and vegetables and for grazing and feeding, forestry,
 18 mining, and industrial and residential subdivision
 19 development. Much of the state's trust land lies in
 20 relatively arid regions, requiring a perfected right to
 21 water in order to be put to the most beneficial and
 22 practical use.

23 (2) The legislature further finds that due to an
 24 enlightened understanding by state officials of the
 25 importance to this state of these land grants, Montana has

1 benefited greatly and its public institutions have been
 2 protected and funded well in excess of what might otherwise
 3 have been practicable. By leasing state trust lands for
 4 usage such as above, the state has obtained and will
 5 continue to obtain funds for education and other trust
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7 (3) The legislature is concerned that the burden of
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 9 continued development of trust lands is presently excessive
 10 and that to not facilitate the future reservation of waters
 11 for these purposes will effectively defeat the main object
 12 of the trust, be in contravention to Article IX, section 3,
 13 and Article X, section 2, of the Montana constitution, and
 14 work a wrong and be prejudicial to those persons leasing
 15 trust lands to the benefit of the trust.

16 Section 2. There is a new R.C.M. section numbered
 17 89-890.2 that reads as follows:

18 89-890.2. Department of state lands to survey for
 19 water usage. The department of state lands shall investigate
 20 and survey all state trust lands subject to its jurisdiction
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 22 or combination of tracts to satisfy the future as well as
 23 the present needs of those tracts when put to the most
 24 beneficial and practical use or combination of uses. The use
 25 or combination of uses must be feasible without overall

1 costs exceeding benefits over the first 20 years of any
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3 Section 3. There is a new R.C.M. section numbered
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5 89-890.3. Application for reservation of waters for
6 state trust lands. (1) The department of state lands may
7 apply to the board for a reservation of water for use on a
8 tract or combination of tracts of land that it has
9 determined meet the requirements of 89-890.2.

10 (2) The application shall contain:

11 (a) the objectives of the reservation;

12 (b) the need for the reservation;

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

15 (d) a description of the tract of land upon which
16 water will be used;

17 (e) the plan of implementation of use;

18 (f) an analysis of the feasibility of the plan;

19 (g) if the objectives of the reservation require
20 construction of a storage, diversion, or other facility:

21 (i) the source of funds and projected date of receipt;

22 (ii) a construction schedule;

23 (h) the next best alternative.

24 (3) For reservations in excess of 4 acre-feet per year
25 per acre within the tract, the department of state lands

1 shall apply pursuant to 89-890. The department of state
2 lands may not make separate applications to come within
3 these limits.

4 (4) An application which contemplates construction
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6 submitted by the department of state lands to the
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10 89-890.4. Reservations of waters for trust lands. (1)
11 Upon receiving an application, the department shall proceed
12 in accordance with 89-881 through 89-883. The department's
13 costs of giving notice, holding the hearing, conducting
14 investigations, and making records, incurred in acting upon
15 the application to reserve water, except the cost of
16 salaries of the department's personnel, shall be paid by the
17 department of state lands.

18 (2) After the hearing provided in 89-883, the board
19 shall adopt an order reserving water not in excess of 4
20 acre-feet per year per acre within the tract unless the
21 department or an objector establishes to the satisfaction of
22 the board any of the following:

23 (a) There are no unappropriated waters in the proposed
24 source.

25 (b) The property, rights, or interests of a holder of

1 an existing water right would be adversely affected by the
2 proposed appropriation.

3 (c) The proposed means of appropriation are
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7 board shall assist whenever possible in modifying the
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Approved by Committee
on Judiciary

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Approved by Comm. on
Appropriation

HOUSE BILL NO. 797

INTRODUCED BY MULAR, SCULLY

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 19 water usage. The department of state lands shall investigate
 20 and survey all state trust lands subject to its jurisdiction
 21 to determine the quantity of water sufficient for each tract
 22 or combination of tracts to satisfy the future as well as
 23 the present needs of those tracts when put to the most
 24 beneficial and practical use or combination of uses. The use
 25 or combination of uses must be feasible without overall

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THIRD READING

1 costs exceeding benefits over the first 20 years of any
2 project.

3 Section 3. There is a new R.C.M. section numbered
4 89-890.3 that reads as follows:

5 89-890.3. Application for reservation of waters for
6 state trust lands. (1) The department of state lands may
7 apply to the board for a reservation of water for use on a
8 tract or combination of tracts of land that it has
9 determined meet the requirements of 89-890.2.

10 (2) The application shall contain:

11 (a) the objectives of the reservation;

12 (b) the need for the reservation;

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

15 (d) a description of the tract of land upon which
16 water will be used;

17 (e) the plan of implementation of use;

18 (f) an analysis of the feasibility of the plan;

19 (g) if the objectives of the reservation require
20 construction of a storage, diversion, or other facility:

21 (i) the source of funds and projected date of receipt;

22 (ii) a construction schedule;

23 (h) the next best alternative.

24 (3) For reservations in excess of 4 acre-feet per year
25 per acre within the tract, the department of state lands

1 shall apply pursuant to 89-890. The department of state
2 lands may not make separate applications to come within
3 these limits.

4 (4) An application which contemplates construction
5 requiring future appropriations by the legislature shall be
6 submitted by the department of state lands to the
7 legislature.

8 Section 4. There is a new R.C.M. section numbered
9 89-890.4 that reads as follows:

10 89-890.4. Reservations of waters for trust lands. (1)
11 Upon receiving an application, the department shall proceed
12 in accordance with 89-881 through 89-883. The department's
13 costs of giving notice, holding the hearing, conducting
14 investigations, and making records, incurred in acting upon
15 the application to reserve water, except the cost of
16 salaries of the department's personnel, shall be paid by the
17 department of state lands.

18 (2) After the hearing provided in 89-883, the board
19 shall adopt an order reserving water not in excess of 4
20 acre-feet per year per acre within the tract unless the
21 department or an objector establishes to the satisfaction of
22 the board any of the following:

23 (a) There are no unappropriated waters in the proposed
24 source.

25 (b) The property, rights, or interests of a holder of

1 an existing water right would be adversely affected by the
2 proposed appropriation.

3 (c) The proposed means of appropriation are
4 inadequate.

5 (d) The project is not feasible.

6 (3) Whenever the board concurs in an objection, the
7 board shall assist whenever possible in modifying the
8 reservation to conform to the objection.

9 (4) A reservation under this section shall date from
10 the date the application is made.

11 (5) The right to use of the water under a reservation
12 shall pass with a conveyance of the land. Changes in the
13 plan filed with the application must be approved by the
14 board pursuant to 89-893.

15 Section 5. There is a new R.C.M. section numbered
16 89-890.5 that reads as follows:

17 89-890.5. Modification or termination. (1) A
18 reservation under 89-890.4 that contemplates a project
19 requiring the appropriation of funds by the legislature may
20 be modified as necessary by the board or terminated if no
21 funds are appropriated within 2 years of the date
22 contemplated in the application.

23 (2) The board shall review reservations pursuant to
24 89-890. If construction is contemplated in the application,
25 as long as a steady ongoing effort is made in good faith to

1 complete that construction in accordance with the plan filed
2 with the application, the right of priority of the
3 reservation and future appropriation based on the
4 reservation may not be terminated unless pursuant to
5 subsection (1).

6 (3) The department of state lands may apply for a
7 modification of the plan. An increased reservation shall
8 have priority as of the date the modification is approved.

9 Section 6. Appropriation. There is appropriated
10 \$120,000 to the department of state lands for the purposes
11 of this act for the biennium ending June 30, 1979, from the
12 following revenue sources:

13 (1) ~~\$40,000~~ \$80,000 from revenues collected under
14 authority of Title 81, chapter 24;

15 (2) \$40,000 from revenues collected under authority of
16 89-3608~~2~~

17 ~~(3) --\$40,000 from the general fund~~

-End-