

HOUSE BILL 694

IN THE HOUSE

February 9, 1979	Introduced and referred to Committee on Natural Resources.
February 20, 1979	Committee recommend bill, as amended.
February 21, 1979	Printed and placed on members' desks.
February 22, 1979	Second reading, as amended. Considered correctly engrossed.
February 23, 1979	Third reading, passed.

IN THE SENATE

February 23, 1979	Introduced and referred to Committee on Natural Resources.
March 15, 1979	Committee recommend bill, not concurred.

IN THE HOUSE

March 16, 1979	Returned from Senate, not concurred.
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1 House BILL NO. 694
 2 INTRODUCED BY Ray Thomas Conroy, Sam Heger, Rota
 3 Khaled Gessler, Sully Kamins

4 A BILL FOR AN ACT ENTITLED: "AN ACT DELEGATING AUTHORITY TO
 5 THE BOARD OF NATURAL RESOURCES AND CONSERVATION TO AUTHORIZE
 6 DIVERSIONS FROM THE YELLOWSTONE RIVER BASIN UNDER ARTICLE X
 7 OF THE YELLOWSTONE RIVER COMPACT, SECTION 85-20-101, MCA, ON
 8 BEHALF OF THE STATE OF MONTANA AS A SIGNATORY STATE THERETO;
 9 AND PROVIDING AN EFFECTIVE DATE."

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

12 Section 1. Definitions. Unless the context requires
 13 otherwise, in [this act] the following definitions apply:

- 14 (1) "Basin" means the Yellowstone River Basin.
- 15 (2) "Board" means the board of natural resources and
 16 conservation provided for in 2-15-3302.
- 17 (3) "Compact" means the Yellowstone River compact
 18 provided for in 85-20-101.
- 19 (4) "Department" means the department of natural
 20 resources and conservation provided for in Title 2, chapter
 21 15, part 33.

22 Section 2. Authority to approve diversions. The board
 23 of natural resources and conservation may consent on behalf
 24 of the state of Montana to diversions of water from the
 25 basin pursuant to Article X of the compact, including

1 diversions of water allocated under the terms of the compact
 2 to the other signatory states of Wyoming and North Dakota.

3 Section 3. Application -- notice -- objections --
 4 hearing. (1) Any appropriator proposing to divert water from
 5 the basin shall file an application with the board.

6 (2) Notice of the proposed diversion shall be given by
 7 the board in the same manner as provided in 85-2-307.

8 (3) (a) An objection to an application must be filed
 9 by the date specified by the board in the notice.

10 (b) The objection must state the name and address of
 11 the objector and facts tending to show that:

- 12 (i) the diversion is not for a beneficial use of water
 13 under the laws of Montana;
- 14 (ii) the water will be used outside Montana in the case
 15 of water allocated to Montana;
- 16 (iii) the property, rights, or interests of the
 17 objector would be adversely affected by the proposed
 18 diversion; or
- 19 (iv) the diversion is not in the public interest of
 20 Montana regardless of whether the water in question is
 21 allocated to Montana or one of the other signatory states to
 22 the compact.

23 (4) If the board receives an objection to an
 24 application, it shall hold a hearing on the application
 25 within 60 days from the date set by the board for filing

-2- **HB 694**
 INTRODUCED BILL

1 objections, after service of notice of the hearing by
2 certified mail upon the applicant and the objector.

3 (5) The hearing shall be conducted under the contested
4 case procedures of the Montana Administrative Procedure Act
5 provided for in Title 2, chapter 4, part 6.

6 Section 4. Criteria for approval -- terms. (1) The
7 board may issue its approval of a diversion of water
8 allocated to Montana under the terms of the compact or
9 unallocated compact water diverted in Montana if:

10 (a) the diversion is for a beneficial use under the
11 laws of Montana;

12 (b) the water will not be used outside Montana;

13 (c) the property, rights, or interests of an
14 appropriator will not be adversely affected; and

15 (d) the diversion is in the public interest of
16 Montana.

17 (2) In determining if the diversion is in the public
18 interest of Montana, the board shall consider:

19 (a) the benefits to the applicant and the state
20 resulting from the proposed diversion;

21 (b) the effects of economic activity in Montana
22 resulting from the proposed diversion;

23 (c) the effects of the proposed diversion on the
24 public health, welfare, and safety.

25 (3) Notwithstanding the provisions of subsection

1 (1)(b), the board may approve a diversion of water allocated
2 to North Dakota or Wyoming, or unallocated compact water
3 diverted in North Dakota or Wyoming, if the diversion will
4 not adversely affect the property, rights, or interests of
5 an appropriator located in Montana.

6 (4) The board may approve a diversion subject to such
7 terms, conditions, restrictions, and limitations as it
8 considers necessary to meet the criteria listed in
9 subsection (1) above.

10 Section 5. Combined proceeding. The board, in its
11 discretion, may consider and act upon any application for
12 diversion of water from the basin filed pursuant to the
13 provisions of [this act] in conjunction with any proceedings
14 involving the siting of a facility or associated facilities
15 conducted under the provisions of Title 75, chapter 20, part
16 4, as amended, or in conjunction with any departmental
17 proceeding involving the issuance of a permit or approval of
18 a change conducted under Title 85, chapter 2, as amended, if
19 in the opinion of the board consideration of both
20 applications in the same proceeding will better enable the
21 board to fulfill its functions, duties, and responsibilities
22 under the provisions of Title 75, chapter 20, part 4, or
23 Title 85, chapter 2, and [this act].

24 Section 6. Board authorization to appear in
25 administrative and legal proceedings -- delegation to

1 department. (1) The board may appear on behalf of the state
2 of Montana in proceedings before the legislatures and
3 administrative agencies of the other signatory states to the
4 compact and in legal proceedings commenced in federal or
5 state court within the other signatory states involving the
6 consent of such signatory states to diversions of water from
7 the basin under Article X of the compact and any other laws
8 or regulations of such signatory states applicable to such
9 diversions, to the extent necessary to protect the interests
10 of Montana and the citizens of Montana in those proceedings.

11 (2) The board may exercise the authority delegated to
12 it under the provisions of subsection (1) by and through the
13 department as the board may direct.

14 Section 7. Supplementary application. [This act] is
15 supplemental to the provisions of Title 85, chapter 2, or
16 any rule promulgated under that chapter.

17 Section 8. Severability. If a part of this act is
18 invalid, all valid parts that are severable from the invalid
19 part remain in effect. If a part of this act is invalid in
20 one or more of its applications, the part remains in effect
21 in all valid applications that are severable from the
22 invalid applications.

23 Section 9. Effective date. This act is effective on
24 passage and approval.

-End-

HB 694

Approved by Committee
on Natural Resources

HOUSE BILL NO. 694

INTRODUCED BY DAY, THIESSEN, CONROY, LIEN, HAGER,

ROTH, KOLSTAD, KEYSER, SCULLY, KEMMIS

A BILL FOR AN ACT ENTITLED: "AN ACT DELEGATING AUTHORITY TO THE BOARD OF NATURAL RESOURCES AND CONSERVATION TO AUTHORIZE DIVERSIONS FROM THE YELLOWSTONE RIVER BASIN UNDER ARTICLE X OF THE YELLOWSTONE RIVER COMPACT, SECTION 85-20-101, MCA, ON BEHALF OF THE STATE OF MONTANA AS A SIGNATORY STATE THERETO; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Definitions. Unless the context requires otherwise, in [this act] the following definitions apply:

(1) "Basin" means the Yellowstone River Basin.

(2) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(3) "Compact" means the Yellowstone River compact provided for in 85-20-101.

(4) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

Section 2. Authority to approve diversions. The board of natural resources and conservation may consent on behalf of the state of Montana to diversions of water from the

basin pursuant to Article X of the compact, including diversions of water allocated under the terms of the compact to the other signatory states of Wyoming and North Dakota.

Section 3. Application -- notice -- objections -- hearing. (1) Any appropriator proposing to divert water from the basin shall file an application with the board.

~~(2) THE APPLICATION MUST STATE THE NAME AND ADDRESS OF THE APPLICANT AND FACTS TENDING TO SHOW THAT:~~

~~(I) THE DIVERSION AND ULTIMATE USE OF THE WATER IS FOR A BENEFICIAL USE OF WATER UNDER THE LAWS OF MONTANA;~~

~~(II) THE WATER WILL NOT BE USED OUTSIDE MONTANA IN THE CASE OF WATER ALLOCATED TO MONTANA;~~

~~(III) THE PROPERTY, RIGHTS, OR INTERESTS OF THE OBJECTOR WOULD NOT BE ADVERSELY AFFECTED BY THE PROPOSED DIVERSION;~~

~~(IV) THE DIVERSION AND ULTIMATE USE OF THE WATER IS IN THE PUBLIC INTEREST OF MONTANA.~~

~~(2)(3)~~ Notice of the proposed diversion shall be given by the board in the same manner as provided in 85-2-307.

~~(3)(4)~~ (a) An objection to an application must be filed by the date specified by the board in the notice.

(b) The objection ~~OBJECTOR~~ must state the ~~HIS~~ name and address of ~~the objector~~ and facts tending to show that:

(i) the diversion ~~is~~ ~~AND ULTIMATE USE OF THE WATER ARE~~ not for a beneficial use of water under the laws of Montana;

1 ~~{++}the water will be used outside Montana in the case~~
2 ~~of water allocated to Montana~~

3 ~~{+++}(III) the property, rights, or interests of the~~
4 ~~objector would be adversely affected by the proposed~~
5 ~~diversion; or~~

6 ~~{+v}(III) the diversion is AND ULTIMATE USE OF THE~~
7 ~~WATER ARE not in the public interest of Montana regardless~~
8 ~~of whether the water in question is allocated to Montana or~~
9 ~~one of the other signatory states to the compact.~~

10 ~~{++}(5) If the board receives an objection to an~~
11 ~~application, it shall hold a hearing on the application~~
12 ~~within 60 days from the date set by the board for filing~~
13 ~~objections, after ~~service~~ SERVICE of notice of the hearing~~
14 ~~MUST BE MADE by certified mail upon the applicant and the~~
15 ~~objector.~~

16 ~~{5}(6) The hearing shall be conducted under the~~
17 ~~contested case procedures of the Montana Administrative~~
18 ~~Procedure Act provided for in Title 2, chapter 4, part 6.~~

19 Section 4. Criteria for approval -- terms. (1) The
20 board may issue its approval of a diversion of water
21 allocated to Montana under the terms of the compact or
22 unallocated compact water diverted in Montana if:

23 (a) the diversion is AND THE ULTIMATE USE OF THE WATER
24 ARE for a beneficial use under the laws of Montana;

25 (b) the water will not be used outside Montana;

1 (c) the property, rights, or interests of an
2 appropriator will not be adversely affected; and

3 (d) the diversion is AND THE ULTIMATE USE OF THE WATER
4 ARE in the public interest of Montana.

5 (2) In determining if the diversion is in the public
6 interest of Montana, the board shall consider:

7 (a) the benefits to the applicant and the state
8 resulting from the proposed diversion;

9 (b) the effects of economic activity in Montana
10 resulting from the proposed diversion;

11 (c) the effects of the proposed diversion on the
12 public health, welfare, and safety; AND

13 (D) THE PROBABLE ENVIRONMENTAL IMPACT OF THE PROPOSED
14 DIVERSION.

15 (3) Notwithstanding the provisions of subsection
16 (1)(b), the board may approve a diversion of water allocated
17 to North Dakota or Wyoming, or unallocated compact water
18 diverted in North Dakota or Wyoming, if the diversion will
19 not adversely affect the property, rights, or interests of
20 an appropriator located in Montana.

21 (4) The board may approve a diversion subject to such
22 terms, conditions, restrictions, and limitations as it
23 considers necessary to meet the criteria listed in
24 subsection (1) above.

25 Section 5. Combined proceeding. The board, in

1 discretion, may consider and act upon any application for
 2 diversion of water from the basin filed pursuant to the
 3 provisions of [this act] in conjunction with any proceedings
 4 involving the siting of a facility or associated facilities
 5 conducted under the provisions of Title 75, chapter 20, part
 6 4, as amended, or in conjunction with any departmental
 7 proceeding involving the issuance of a permit or approval of
 8 a change conducted under Title 85, chapter 2, as amended, if
 9 in the opinion of the board consideration of both
 10 applications in the same proceeding will better enable the
 11 board to fulfill its functions, duties, and responsibilities
 12 under the provisions of Title 75, chapter 20, part 4, or
 13 Title 85, chapter 2, and [this act]. ~~HOWEVER, THE BOARD MAY~~
 14 ~~NOT CONSENT TO THE DIVERSION OF MONTANA WATER OUT OF THE~~
 15 ~~BASIN FOR ULTIMATE USE IN A FACILITY LOCATED IN MONTANA AS~~
 16 ~~DEFINED IN TITLE 75, CHAPTER 20, PRIOR TO THE BOARD'S~~
 17 ~~ISSUANCE OF A CERTIFICATE FOR THE FACILITY IN ACCORDANCE~~
 18 ~~WITH TITLE 75, CHAPTER 20.~~

19 Section 6. Board authorization to appear in
 20 administrative and legal proceedings -- delegation to
 21 department. (1) The board may appear on behalf of the state
 22 of Montana in proceedings before the legislatures and
 23 administrative agencies of the other signatory states to the
 24 compact and in legal proceedings commenced in federal or
 25 state court within the other signatory states involving the

1 consent of such signatory states to diversions of water from
 2 the basin under Article X of the compact and any other laws
 3 or regulations of such signatory states applicable to such
 4 diversions, to the extent necessary to protect the interests
 5 of Montana and the citizens of Montana in those proceedings.

6 (2) The board may exercise the authority delegated to
 7 it under the provisions of subsection (1) by and through the
 8 department as the board may direct.

9 Section 7. Supplementary application. [This act] is
 10 supplemental to the provisions of Title 85, chapter 2, or
 11 any rule promulgated under that chapter.

12 Section 8. Severability. If a part of this act is
 13 invalid, all valid parts that are severable from the invalid
 14 part remain in effect. If a part of this act is invalid in
 15 one or more of its applications, the part remains in effect
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~~(2)(3) Notice of the proposed diversion shall be given by the board in the same manner as provided in 85-2-307.~~

~~(3)(4) (a) An objection to an application must be filed by the date specified by the board in the notice.~~

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 10 applications in the same proceeding will better enable the
 11 board to fulfill its functions, duties, and responsibilities
 12 under the provisions of Title 75, chapter 20, part 4, or
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 14 ~~NOT CONSENT TO THE DIVERSION OF MONTANA WATER OUT OF THE~~
 15 ~~Basin for ultimate use in a facility located in Montana as~~
 16 ~~defined in Title 75, Chapter 20, prior to the board's~~
 17 ~~issuance of a certificate for the facility in accordance~~
 18 ~~with Title 75, Chapter 20.~~

19 Section 6. Board authorization to appear in
 20 administrative and legal proceedings -- delegation to
 21 department. (1) The board may appear on behalf of the state
 22 of Montana in proceedings before the legislatures and
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 24 compact and in legal proceedings commenced in federal or
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