

CHAPTER NO. 689

HOUSE BILL NO. 842

INTRODUCED BY DAY

BY REQUEST OF SELECT WATER COMMITTEE

IN THE HOUSE

February 16, 1979	Introduced and referred to Select Committee on Water.
February 20, 1979	Committee recommend bill do pass. Report adopted.
February 21, 1979	Second reading, do pass as amended.
February 22, 1979	Correctly engrossed.
February 23, 1979	Third reading, passed. Transmitted to second house.

IN THE SENATE

February 23, 1979	Introduced and referred to Committee on Natural Resources.
March 15, 1979	Committee recommend bill be concurred in as amended. Report adopted.
March 17, 1979	Motion pass consideration.
March 19, 1979	Second reading, concurred in.
March 22, 1979	Third reading, concurred in as amended.

IN THE HOUSE

March 22, 1979	Returned from second house. Concurred in as amended.
March 23, 1979	On motion consideration passed until the 71st Legislative Day.
March 30, 1979	Second reading, amendments rejected.

April 2, 1979	On motion Joint Conference Committee requested.
April 3, 1979	Joint Conference Committee appointed.
April 6, 1979	Joint Conference Committee dissolved.
	On motion Free Conference Committee requested.
April 7, 1979	Free Joint Conference Committee appointed.
April 10, 1979	Free Joint Conference Committee reported.
April 12, 1979	Second reading, adopted.
April 13, 1979	Third reading, adopted.
	Adopted by second house.
April 16, 1979	Sent to enrolling.
April 17, 1979	Reported correctly enrolled.
	Signed by the President.
	Signed by the Speaker.
April 18, 1979	Delivered to Governor.
April 20, 1979	On motion Governor's amendments placed on second reading this day.
	Second reading, amendments adopted.
	Third reading, amendments adopted.
	Transmitted to Senate.

1 *House* BILL NO. *842*  
 2 INTRODUCED BY *Day By Request of Subj Water*  
 3 *Committee*

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PERMIT THE  
 5 REALLOCATION AND APPROPRIATION OF WATER RESERVED FOR  
 6 PURPOSES OF MAINTAINING IN-STREAM FLOW IN THE YELLOWSTONE  
 7 RIVER WHENEVER THE BOARD OF NATURAL RESOURCES AND  
 8 CONSERVATION DETERMINES THAT THE RESERVATION IS NOT  
 9 REQUIRED; AMENDING SECTION 85-2-605, MCA; PROVIDING AN  
 10 EFFECTIVE DATE."

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

13 Section 1. Section 85-2-605, MCA, is amended to read:  
 14 "85-2-605. Reservations. (1) The department may apply  
 15 for reservations and shall, as rapidly as possible, assist  
 16 other appropriate state agencies and political subdivisions  
 17 in applying for reservations within the basin. The United  
 18 States or any agency thereof may apply for reservation of  
 19 water in the basin under 85-2-316 for beneficial use of that  
 20 water in the state of Montana. Particular emphasis shall be  
 21 given to applications to reserve water for agricultural,  
 22 municipal, and minimum flow purposes for the protection of  
 23 existing rights and aquatic life.

24 (2) A reservation of water under this part for the  
 25 purpose of maintaining minimum flows for the protection of

1 aquatic life is subject to reallocation by the board and  
 2 subsequent appropriations whenever the board determines that  
 3 all or part of the reservation is not required to protect  
 4 aquatic life."

5 Section 2. Effective date. This act is effective on  
 6 passage and approval.

-End-

## HOUSE BILL NO. 842

INTRODUCED BY DAY BY REQUEST OF SELECT WATER COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT TO PERMIT THE REALLOCATION AND APPROPRIATION OF WATER RESERVED FOR PURPOSES OF MAINTAINING IN-STREAM FLOW IN THE YELLOWSTONE RIVER WHENEVER THE BOARD OF NATURAL RESOURCES AND CONSERVATION DETERMINES THAT THE RESERVATION IS NOT REQUIRED; AMENDING SECTION 85-2-605, MCA; PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 85-2-605, MCA, is amended to read:

"85-2-605. Reservations. (1) The department may apply for reservations and shall, as rapidly as possible, assist other appropriate state agencies and political subdivisions in applying for reservations within the basin. The United States or any agency thereof may apply for reservation of water in the basin under 85-2-316 for beneficial use of that water in the state of Montana. Particular emphasis shall be given to applications to reserve water for agricultural, municipal, and minimum flow purposes for the protection of existing rights and aquatic life.

(2) ~~A ALL OR PART OF A reservation of water under this part for the purpose of maintaining a minimum flows-for-the~~

~~protection-of-aquatic-life FLOW, LEVEL, OR QUALITY OF WATER AS PROVIDED IN 85-2-316 is subject to reallocation by the board and subsequent appropriations whenever the board AFTER NOTICE AND AN OPPORTUNITY FOR A HEARING, determines that:~~

~~(A) all or part of the reservation is not required to protect-aquatic-life FOR ITS PURPOSE; AND~~

~~(B) A PROPOSED NEW USE IS A HIGHER BENEFICIAL USE FOR MONTANA THAN THAT FOR WHICH THE RESERVATION WAS MADE."~~

Section 2. Effective date. This act is effective on passage and approval.

-End-

## HOUSE BILL NO. 842

INTRODUCED BY DAY BY REQUEST OF SELECT WATER COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT TO PERMIT THE REALLOCATION AND APPROPRIATION OF WATER RESERVED FOR PURPOSES OF MAINTAINING IN-STREAM MINIMUM FLOW IN THE YELLOWSTONE RIVER WHENEVER THE BOARD OF NATURAL RESOURCES AND CONSERVATION DETERMINES THAT THE RESERVATION IS NOT REQUIRED, LEVEL, OR QUALITY OF WATER; LIMITING MINIMUM FLOW RESERVATIONS; REQUIRING ADJUDICATION BEFORE AWARD OF RESERVATIONS; CLARIFYING THE METHOD OF APPROPRIATION OF CERTAIN RESERVED WATER; AMENDING SECTION 85-2-605 85-2-316, MCA; PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 85-2-605, MCA, is amended to read:  
 "85-2-605. Reservations. (1) The department may apply for reservations and shall, as rapidly as possible, assist other appropriate state agencies and political subdivisions in applying for reservations within the basin. The United States or any agency thereof may apply for reservation of water in the basin under 85-2-316 for beneficial use of that water in the state of Montana. Particular emphasis shall be given to applications to reserve water for agricultural, municipal, and minimum flow purposes for the protection of

existing rights and aquatic life

(2) A part of a reservation of water under this part for the purpose of maintaining a minimum flow for the protection of aquatic life flow, level, or quality of water as provided in 85-2-316 is subject to reallocation by the board and subsequent appropriations whenever the board after notice and an opportunity for a hearing determines that:

(a) all or part of the reservation is not required to protect aquatic life for its purpose; and

(b) a proposed new use is a higher beneficial use for Montana than that for which the reservation was made."

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,

1 conducting investigations, and making records incurred in  
2 acting upon the application to reserve water, except the  
3 cost of salaries of the department's personnel, shall be  
4 paid by the applicant.

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

- 8 (a) the purpose of the reservation;
- 9 (b) the need for the reservation;
- 10 (c) the amount of water necessary for the purpose of  
11 the reservation;
- 12 (d) that the reservation is in the public interest.
- 13 (4) If the purpose of the reservation requires  
14 construction of a storage or diversion facility, the  
15 applicant shall establish to the satisfaction of the board  
16 that there will be progress toward completion of the  
17 facility and accomplishment of the purpose with reasonable  
18 diligence in accordance with an established plan.

19 ~~(5) The board shall limit any reservations after [the~~  
20 ~~effective date of this act] for maintenance of minimum flow,~~  
21 ~~level, or quality of water that it awards at any point on a~~  
22 ~~stream or river to a maximum of the historic low flow as~~  
23 ~~determined by the department at such point on the stream or~~  
24 ~~river.~~

25 ~~(6) The board may not after [the effective date of~~

1 ~~this act] award any reservation on any stream or river until~~  
2 ~~the existing water rights on that stream or river have been~~  
3 ~~adjudicated in accordance with this chapter.~~

4 ~~(7) After the adoption of an order reserving~~  
5 ~~waters, the department may reject an application and refuse~~  
6 ~~a permit for the appropriation of reserved waters or may,~~  
7 ~~with the approval of the board, issue the permit subject to~~  
8 ~~such terms and conditions it considers necessary for the~~  
9 ~~protection of the objectives of the reservation.~~

10 ~~(8) Any person desiring to use water reserved to a~~  
11 ~~conservation district may apply to the department for a~~  
12 ~~permit under 85-2-302. The department shall maintain records~~  
13 ~~of permits issued for water reserved to conservation~~  
14 ~~districts and be responsible for rendering all technical and~~  
15 ~~administrative assistance in the processing of such~~  
16 ~~applications for the conservation districts. The~~  
17 ~~conservation district must concur with the department's~~  
18 ~~action on any application for a permit for waters reserved~~  
19 ~~to the district.~~

20 ~~(9) A reservation under this section shall date~~  
21 ~~from the date the order reserving the water is adopted by~~  
22 ~~the board and shall not adversely affect any rights in~~  
23 ~~existence at that time.~~

24 ~~(10) The board shall, periodically but at least once~~  
25 ~~every 10 years, review existing reservations to ensure that~~

1 the objectives of the reservation are being met. Where the  
 2 objectives of the reservation are not being met, the board  
 3 may extend, revoke, or modify the reservation.

4 ~~(11) The board may modify an existing or future order~~  
 5 ~~originally adopted to reserve water for the purpose of~~  
 6 ~~maintaining minimum flow, level, or quality of water, so as~~  
 7 ~~to reallocate such reservation or portion thereof to an~~  
 8 ~~applicant who is a qualified reservant under this section or~~  
 9 ~~who is eligible for a permit to appropriate water under this~~  
 10 ~~part. Reallocation of reserved water may be made by the~~  
 11 ~~board following notice and hearing wherein the board finds~~  
 12 ~~that need for the reallocation has been shown by the~~  
 13 ~~applicant to outweigh the need shown by the original~~  
 14 ~~reservant. Reallocation of reserved water shall not~~  
 15 ~~adversely affect the priority date of the reservation, and~~  
 16 ~~the reservation shall retain its priority date despite~~  
 17 ~~reallocation to a different entity for a different use.~~

18 ~~(12) The board shall assign the following order of~~  
 19 ~~preference to reallocated reservations:~~

- 20 ~~(a) municipal and domestic use;~~
- 21 ~~(b) agricultural and stock water use;~~
- 22 ~~(c) industrial use;~~
- 23 ~~(d) maintenance of minimum flow, level, or quality of~~  
 24 ~~water.~~

25 ~~(13) Nothing in this section vests the board with the~~

1 ~~authority to alter a water right that is not a reservation."~~

2 Section 2. Effective date. This act is effective on  
 3 passage and approval.

-End-

HOUSE BILL NO. 842

INTRODUCED BY DAY

BY REQUEST OF SELECT WATER COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT TO PERMIT THE REALLOCATION AND APPROPRIATION OF WATER RESERVED FOR PURPOSES OF MAINTAINING IN-STREAM MINIMUM IN-STREAM FLOW IN THE---YELLOWSTONE---RIVER---WHENEVER---THE---BOARD---OF---NATURAL RESOURCES---AND---CONSERVATION---DETERMINES---THAT---THE---RESERVATION IS---NOT---REQUIRED, LEVEL, OR QUALITY OF WATER; LIMITING MINIMUM FLOW RESERVATIONS; REQUIRING ADJUDICATION BEFORE AWARD OF RESERVATIONS; CLARIFYING THE METHOD OF APPROPRIATION OF CERTAIN RESERVED WATER; AMENDING SECTION 85-2-605 85-2-316, MCA; PROVIDING AN EFFECTIVE DATE."

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

~~Section 1. Section 85-2-605, MCA, is amended to read:~~  
 "85-2-605. Reservations. (1) The department may apply for reservations and shall as rapidly as possible assist other appropriate state agencies and political subdivisions in applying for reservations within the basin. The United States or any agency thereof may apply for reservation of water in the basin under 85-2-316 for beneficial use of that water in the state of Montana. Particular emphasis shall be given to applications to reserve water for agriculture,

~~municipality and minimum flow purposes for the protection of existing rights and aquatic life.~~

~~(2) A full or part of a reservation of water under this part for the purpose of maintaining a minimum flows for the protection of aquatic life flow, level, or quality of water as provided in 85-2-316 is subject to reallocation by the board and subsequent appropriations whenever the board after notice and an opportunity for a hearing determines that~~

~~(a) all or part of the reservation is not required to protect aquatic life for its purpose; and~~

~~(b) a proposed new use is a higher beneficial use for Montana than that for which the reservation was made."~~

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

REFERENCE BILL: Includes Free Joint  
 Conference Committee Report  
 Dated 4/10/79



1 department's costs of giving notice, holding the hearing,  
2 conducting investigations, and making records incurred in  
3 acting upon the application to reserve water, except the  
4 cost of salaries of the department's personnel, shall be  
5 paid by the applicant.

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

- 9 (a) the purpose of the reservation;  
10 (b) the need for the reservation;  
11 (c) the amount of water necessary for the purpose of  
12 the reservation;  
13 (d) that the reservation is in the public interest.

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

20 ~~(5) The board shall limit any reservations after [the~~  
21 ~~effective date of this act] for maintenance of minimum flow,~~  
22 ~~level, or quality of water that it awards at any point on a~~  
23 ~~stream or river to a maximum of the historic low flow as~~  
24 ~~determined by the department at such point on the stream or~~  
25 ~~river 50% OF THE AVERAGE ANNUAL FLOW OF RECORD ON GAUGED~~

1 ~~STREAMS. UNGAUGED STREAMS CAN BE ALLOCATED AT THE~~  
2 ~~DISCRETION OF THE BOARD.~~

3 ~~(6) The board may not after [the effective date of~~  
4 ~~this act] award any reservation on any stream or river until~~  
5 ~~the existing water rights on that stream or river have been~~  
6 ~~adjudicated in accordance with this chapter.~~

7 ~~(5)(7)(6)~~ After the adoption of an order reserving  
8 waters, the department may reject an application and refuse  
9 a permit for the appropriation of reserved waters or may,  
10 with the approval of the board, issue the permit subject to  
11 such terms and conditions it considers necessary for the  
12 protection of the objectives of the reservation.

13 ~~(7) Any person desiring to use water reserved to a~~  
14 ~~conservation district FOR AGRICULTURAL PURPOSES may apply to~~  
15 ~~MUST INFORM the department for a permit under 65-2-302, the~~  
16 ~~OF THE DESIRED USE. THE department shall maintain records of~~  
17 ~~permits issued for ALL USES OF water reserved to~~  
18 ~~conservation districts and be responsible for rendering all~~  
19 ~~technical and administrative assistance in the processing of~~  
20 ~~such applications for the conservation districts. The~~  
21 ~~conservation district must concur with the department's~~  
22 ~~action on any application for a permit for waters reserved~~  
23 ~~to the district. NO SUCH USE MAY BE PERMITTED WITHOUT~~  
24 ~~CONSERVATION DISTRICT'S CONCURRENCE.~~

25 ~~(6)(7)(8)~~ A reservation under this section shall date

1 from the date the order reserving the water is adopted by  
2 the board and shall not adversely affect any rights in  
3 existence at that time.

4 ~~§§101(9)~~ The board shall, periodically but at least  
5 once every 10 years, review existing reservations to ensure  
6 that the objectives of the reservation are being met. Where  
7 the objectives of the reservation are not being met, the  
8 board may extend, revoke, or modify the reservation.

9 ~~§§101(10)~~ The board may modify an existing or future  
10 order originally adopted to reserve water for the purpose of  
11 maintaining minimum flow, level, or quality of water, so as  
12 to reallocate such reservation or portion thereof to an  
13 applicant who is a qualified reservant under this section or  
14 who is eligible for a permit to appropriate water under this  
15 part. Reallocation of reserved water may be made by the  
16 board following notice and hearing wherein the board finds  
17 that ALL OR PART OF THE RESERVATION IS NOT REQUIRED FOR ITS  
18 PURPOSE AND THAT THE need for the reallocation has been  
19 shown by the applicant to outweigh the need shown by the  
20 original reservant. Reallocation of reserved water shall not  
21 adversely affect the priority date of the reservation, and  
22 the reservation shall retain its priority date despite  
23 reallocation to a different entity for a different use. THE  
24 BOARD MAY NOT REALLOCATE WATER RESERVED UNDER THIS SECTION  
25 ON ANY STREAM OR RIVER MORE FREQUENTLY THAN ONCE EVERY 5

1 YEARS. WHENEVER WATER IS REALLOCATED, THE PRIORITY DATE OF  
2 THE NEW USE IS THE DATE OF REALLOCATION, NOT THE DATE OF THE  
3 ORIGINAL RESERVATION.

4 ~~§§111~~ THE ~~NOTWITHSTANDING THE PROVISIONS OF~~  
5 ~~85-2-401, THE board shall assign the following order of~~  
6 ~~preference PRIORITY to reallocated reservations:~~

7 (a) municipal and domestic use;

8 (b) agricultural and stock water use;

9 (c) industrial and OTHER USES.

10 ~~(d) maintenance of minimum flow, level, or quality of~~  
11 ~~water.~~

12 ~~§§112~~ Nothing in this section vests the board with  
13 the authority to alter a water right that is not a  
14 reservation.

15 Section 2. Effective date. This act is effective on  
16 passage and approval.

1 HOUSE BILL NO. 842  
 2 INTRODUCED BY DAY  
 3 BY REQUEST OF SELECT WATER COMMITTEE  
 4  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO PERMIT THE  
 6 REALLOCATION AND APPROPRIATION OF WATER RESERVED FOR  
 7 PURPOSES OF MAINTAINING ~~IN-STREAM MINIMUM IN-STREAM~~ MINIMUM  
 8 FLOW ~~IN THE YELLOWSTONE RIVER WHENEVER THE BOARD OF NATURAL~~  
 9 ~~RESOURCES AND CONSERVATION DETERMINES THAT THE RESERVATION~~  
 10 ~~IS NOT REQUIRED, LEVEL, OR QUALITY OF WATER; LIMITING~~  
 11 ~~MINIMUM FLOW RESERVATIONS; REQUIRING ADJUDICATION BEFORE~~  
 12 ~~AWARD OF RESERVATIONS; CLARIFYING THE METHOD OF~~  
 13 ~~APPROPRIATION OF CERTAIN RESERVED WATER; AMENDING SECTION~~  
 14 ~~85-2-605 85-2-316, MCA; PROVIDING AN EFFECTIVE DATE."~~

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

16 ~~Section 1. Section 85-2-605, MCA, is amended to read:~~  
 17 ~~"85-2-605. Reservations. (1) The department may apply~~  
 18 ~~for reservations and shall, as rapidly as possible, assist~~  
 19 ~~other appropriate state agencies and political subdivisions~~  
 20 ~~in applying for reservations within the basin. The United~~  
 21 ~~States or any agency thereof may apply for reservation of~~  
 22 ~~water in the basin under 85-2-316 for beneficial use of that~~  
 23 ~~water in the state of Montana. Particular emphasis shall be~~  
 24 ~~given to applications to reserve water for agricultural,~~  
 25

1 ~~municipal, and minimum flow purposes for the protection of~~  
 2 ~~existing rights and aquatic life.~~  
 3 ~~(2) A part or part of a reservation of water under this~~  
 4 ~~part for the purpose of maintaining a minimum flow for the~~  
 5 ~~protection of aquatic life flow level, or quality of water~~  
 6 ~~as provided in 85-2-316 is subject to reallocation by the~~  
 7 ~~board and subsequent appropriations whenever the board,~~  
 8 ~~after notice and an opportunity for a hearing, determines~~  
 9 ~~that:~~  
 10 ~~(a) all or part of the reservation is not required to~~  
 11 ~~protect aquatic life for its purpose; and~~  
 12 ~~(b) a proposed new use is a higher beneficial use for~~  
 13 ~~Montana than that for which the reservation was made."~~  
 14 ~~SECTION 1. SECTION 85-2-316, MCA, IS AMENDED TO READ:~~  
 15 ~~"85-2-316. Reservation of waters. (1) The state or any~~  
 16 ~~political subdivision or agency thereof or the United States~~  
 17 ~~or any agency thereof may apply to the board to reserve~~  
 18 ~~waters for existing or future beneficial uses or to maintain~~  
 19 ~~a minimum flow, level, or quality of water throughout the~~  
 20 ~~year or at such periods or for such length of time as the~~  
 21 ~~board designates.~~  
 22 ~~(2) Upon receiving an application, the department~~  
 23 ~~shall proceed in accordance with 85-2-307 through 85-2-309.~~  
 24 ~~After the hearing provided in 85-2-309, the board shall~~  
 25 ~~decide whether to reserve the water for the applicant. The~~

1 department's costs of giving notice, holding the hearing,  
2 conducting investigations, and making records incurred in  
3 acting upon the application to reserve water, except the  
4 cost of salaries of the department's personnel, shall be  
5 paid by the applicant.

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

9 (a) the purpose of the reservation;

10 (b) the need for the reservation;

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

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

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

20 ~~(5) The board shall limit any reservations after [the~~  
21 ~~effective date of this act] for maintenance of minimum flow~~  
22 ~~level, or quality of water that it awards at any point on a~~  
23 ~~stream or river to a maximum of the historic low flow as~~  
24 ~~determined by the department at such point on the stream or~~  
25 ~~river 50% OF THE AVERAGE ANNUAL FLOW OF RECORD ON GAUGED~~

1 ~~STREAMS. UNGAUGED STREAMS CAN BE ALLOCATED AT THE~~  
2 ~~DISCRETION OF THE BOARD.~~

3 ~~(6) The board may not after [the effective date of~~  
4 ~~this act] award any reservation on any stream or river until~~  
5 ~~the existing water rights on that stream or river have been~~  
6 ~~adjudicated in accordance with this chapter.~~

7 ~~(5)(7)(6)~~ After the adoption of an order reserving  
8 waters, the department may reject an application and refuse  
9 a permit for the appropriation of reserved waters or may,  
10 with the approval of the board, issue the permit subject to  
11 such terms and conditions it considers necessary for the  
12 protection of the objectives of the reservation.

13 ~~(6)(7) Any person desiring to use water reserved to a~~  
14 ~~conservation district FOR AGRICULTURAL PURPOSES may apply to~~  
15 ~~SHALL MAKE APPLICATION FOR SUCH USE WITH THE DISTRICT, AND~~  
16 ~~THE DISTRICT UPON APPROVAL OF THE APPLICATION MUST INFORM~~  
17 ~~the department for a permit under 85-2-302, and OF THE~~  
18 ~~RESERVED APPROVED USE. THE department shall maintain records~~  
19 ~~of permits issued for ALL USES OF water reserved to~~  
20 ~~conservation districts and be responsible for rendering all~~  
21 ~~technical and administrative assistance WITHIN THE~~  
22 ~~DEPARTMENT'S STAFFING AND BUDGETING LIMITATIONS in the~~  
23 ~~processing of such applications for the conservation~~  
24 ~~districts. The conservation district must concur with the~~  
25 ~~department's action on any application for a permit for~~

~~waters reserved to the district. NO SUCH USE MAY BE PERMITTED WITHOUT CONSERVATION DISTRICT'S CONCURRENCE.~~

~~(6)(9)(8)~~ A reservation under this section shall date from the date the order reserving the water is adopted by the board and shall not adversely affect any rights in existence at that time.

~~(7)(9)(9)~~ The board shall, periodically but at least once every 10 years, review existing reservations to ensure that the objectives of the reservation are being met. Where the objectives of the reservation are not being met, the board may extend, revoke, or modify the reservation.

~~(10)~~ The board may modify an existing or future order originally adopted to reserve water for the purpose of maintaining minimum flow, level, or quality of water, so as to reallocate such reservation or portion thereof to an applicant who is a qualified reservant under this section or who is eligible for a permit to appropriate water under this part. Reallocation of reserved water may be made by the board following notice and hearing wherein the board finds that ALL OR PART OF THE RESERVATION IS NOT REQUIRED FOR ITS PURPOSE AND THAT THE need for the reallocation has been shown by the applicant to outweigh the need shown by the original reservant. REALLOCATION OF RESERVED WATER SHALL NOT ADVERSELY AFFECT THE PRIORITY DATE OF THE RESERVATION, AND THE RESERVATION SHALL RETAIN ITS PRIORITY DATE DESPITE

REALLOCATION TO A DIFFERENT ENTITY FOR A DIFFERENT USE. Reallocation of reserved water shall not adversely affect the priority date of the reservation, and the reservation shall retain its priority date despite reallocation to a different entity for a different use. THE BOARD MAY NOT REALLOCATE WATER RESERVED UNDER THIS SECTION ON ANY STREAM OR RIVER MORE FREQUENTLY THAN ONCE EVERY 5 YEARS. WHENEVER WATER IS REALLOCATED, THE PRIORITY DATE OF THE NEW USE IS THE DATE OF REALLOCATION, NOT THE DATE OF THE ORIGINAL RESERVATION.

~~(11)~~ The NOTWITHSTANDING THE PROVISIONS OF 85-2-101, THE board shall assign the following order of preference PRIORITY to reallocated reservations:

- ~~(a)~~ municipal and domestic uses
- ~~(b)~~ agricultural and stock water uses
- ~~(c)~~ industrial uses OTHER USES
- ~~(d)~~ maintenance of minimum flow, level, or quality of waters

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

Section 2. Effective date. This act is effective on passage and approval.

-END-

March 15, 1979

SENATE STANDING COMMITTEE REPORT  
(Natural Resources)

That House Bill No. 842 be amended as follows:

1. Title, lines 6 through 9.

Following: "MAINTAINING" on line 6

Strike: "IN-STREAM"

Insert: "MINIMUM"

Following: "FLOW" on line 6

Strike: remainder of line 6 through "REQUIRED;" on line 9

Insert: ", LEVEL, OR QUALITY OF WATER; LIMITING MINIMUM FLOW RESERVATIONS; REQUIRING ADJUDICATION BEFORE AWARD OF RESERVATIONS; CLARIFYING THE METHOD OF APPROPRIATION OF CERTAIN RESERVED WATER;"

Following: "SECTION" on line 9

Strike: "85-2-605"

Insert: "85-2-316"

2. Page 1, line 13 through line 4 on page 2.

Following: line 12

Strike: Section 1 in its entirety

Insert: "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 [the effective date of this act] 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 the historic low flow as determined by the department at such point on the stream or river.

(6) The board may not after [the effective date of this act] award any reservation on any stream or river until the existing water rights on that stream or river have been adjudicated in accordance with this chapter.

~~(5)~~ (7) After the adoption of an order reserving waters, the department may reject an application and refuse a permit for the appropriation of reserved waters or may, with the

approval of the board, issue the permit subject to such terms and conditions it considers necessary for the protection of the objectives of the reservation.

(8) Any person desiring to use water reserved to a conservation district may apply to the department for a permit under 85-2-302, the department shall maintain records of permits issued for water reserved to conservation districts and be responsible for rendering all technical and administrative assistance in the processing of such applications for the conservation districts. The conservation district must concur with the department's action on any application for a permit for waters reserved to the district.

~~(6)~~ (9) A reservation under this section shall date from the date the order reserving the water is adopted by the board and shall not adversely affect any rights in existence at that time.

~~(7)~~ (10) The board shall, periodically but at least once every 10 years, review existing reservations to ensure that the objectives of the reservation are being met. Where the objectives of the reservation are not being met, the board may extend, revoke, or modify the reservation.

(11) The board may modify an existing or future order originally adopted to reserve water for the purpose of maintaining minimum flow, level, or quality of water, so as to reallocate such reservation or portion thereof to an applicant who is a qualified reservant under this section or who is eligible for a permit to appropriate water under this part. Reallocation of reserved water may be made by the board following notice and hearing wherein the board finds that need for the reallocation has been shown by the applicant to outweigh the need shown by the original reservant. Reallocation of reserved water shall not adversely affect the priority date of the reservation, and the reservation shall retain its priority date despite reallocation to a different entity for a different use.

(12) The board shall assign the following order of preference to reallocated reservations:

- (a) municipal and domestic use;
- (b) agricultural and stock water use;
- (c) industrial use;
- (d) maintenance of minimum flow, level, or quality of water.

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

Governor's Amendments to House Bill No. 842, reference bill including free joint conference committee report dated 4/10/79.

1. Title, line 7.

Following: "MINIMUM"

Strike: "IN-STREAM"

Insert: "MINIMUM"

2. Title, lines 12 and 13.

Following: "RESERVATIONS,"

Strike: "CLARIFYING THE METHOD OF APPROPRIATION OF CERTAIN RESERVED WATER;"

3. Page 4, line 15.

Following: line 14

Insert: "shall make application for such use with the district, and the district upon approval of the application"

4. Page 4, line 16.

Strike: "DESIRED"

Insert: "approved"

5. Page 4, line 18.

Following: "rendering"

Strike: "all"

6. Page 4, line 19.

Following: "assistance"

Insert: "within the department's staffing and budgeting limitations"

7. Page 4, line 23.

Following: "district."

Strike: "NO SUCH USE MAY BE PERMITTED WITHOUT CONSERVATION DISTRICT'S CONCURRENCE."

8. Page 5, lines 13 through 15.

Following: "section"

Strike: "or who is eligible for a permit to appropriate water under this part"

9. Page 5, lines 20 through 23.

Following: "reservant."

Insert: "Reallocation of reserved water shall not adversely affect the priority date of the reservation, and the reservation shall retain its priority date despite reallocation to a different entity for a different use."

10. Page 6, lines 1 through 3.

Following: "YEARS."

Strike: ~~the remainder of lines 1 through 3 in their entirety~~

11. Page 6, lines 4 through 11.

Following: line 3

Strike: subsection (11) in its entirety

Renumber: subsequent subsection