

HOUSE BILL NO. 494

INTRODUCED BY CURTISS, ASAY

IN THE HOUSE

January 26, 1981	Introduced and referred to Committee on Water.
February 13, 1981	Committee recommend bill do pass as amended. Report adopted.
February 14, 1981	Bill printed and placed on members' desks.
February 17, 1981	Second reading, do pass.
February 18, 1981	Correctly engrossed.
February 19, 1981	Third reading, passed. Ayes, 98; Noes, 0. Transmitted to Senate.

IN THE SENATE

February 20, 1981	Introduced and referred to Committee on Agriculture, Livestock and Irrigation.
March 10, 1981	Committee recommend bill be concurred in as amended. Report adopted.
March 11, 1981	Second reading, concurred in.
March 13, 1981	Third reading, concurred in as amended. Ayes, 48; Noes, 0.

IN THE HOUSE

March 14, 1981	Returned from Senate as amended.
March 18, 1981	Second reading, amendments concurred in.

March 20, 1981

Third reading, amendments concurred  
in. Ayes, 93; Noes, 0. Sent to  
enrolling.

Reported correctly enrolled.



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."

Approved by the Select  
Committee on Water

1 HOUSE BILL NO. 494

2 INTRODUCED BY CURTISS, ASAY

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE THE BOARD OF  
5 NATURAL RESOURCES AND CONSERVATION TO ALLOW ADEQUATE TIME  
6 FOR A CONSERVATION DISTRICT TO DEVELOP A PLAN TO UTILIZE ITS  
7 RESERVATION OF WATER; TO REQUIRE THE DEPARTMENT OF NATURAL  
8 RESOURCES AND CONSERVATION TO COMPLY WITH A REQUEST FOR  
9 ASSISTANCE BY A DISTRICT WITHIN 12 MONTHS; AMENDING SECTION  
10 85-2-316, MCA."

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

13 Section 1. Section 85-2-316, MCA, is amended to read:  
14 "85-2-316. Reservation of waters. (1) The state or any  
15 political subdivision or agency thereof or the United States  
16 or any agency thereof may apply to the board to reserve  
17 waters for existing or future beneficial uses or to maintain  
18 a minimum flow, level, or quality of water throughout the  
19 year or at such periods or for such length of time as the  
20 board designates.

21 (2) Upon receiving an application, the department  
22 shall proceed in accordance with 85-2-307 through 85-2-309.  
23 After the hearing provided in 85-2-309, the board shall  
24 decide whether to reserve the water for the applicant. The  
25 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 May  
20 9, 1979, for maintenance of minimum flow, level, or quality  
21 of water that it awards at any point on a stream or river to  
22 a maximum of 50% of the average annual flow of record on  
23 gauged streams. Ungauged streams can be allocated at the  
24 discretion of the board.

25 (6) 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 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, WITHIN ITS  
 17 STAFFING AND BUDGETING LIMITATIONS, complete any feasibility  
 18 study requested by the districts within 12 months of the  
 19 time the request was made. The board shall extend the time  
 20 allowed to develop a plan identifying projects for utilizing  
 21 a district's reservation so long as the conservation  
 22 district makes a good faith effort, within its staffing and  
 23 budget limitations, to develop a plan.

24 (8) A reservation under this section shall date from  
 25 the date the order reserving the water is adopted by the

1 board and shall not adversely affect any rights in existence  
 2 at that time.

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

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

25 (11) Nothing in this section vests the board with the

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

-End-

## 1 HOUSE BILL NO. 494

2 INTRODUCED BY CURTISS, ASAY

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE THE BOARD OF  
5 NATURAL RESOURCES AND CONSERVATION TO ALLOW ADEQUATE TIME  
6 FOR A CONSERVATION DISTRICT TO DEVELOP A PLAN TO UTILIZE ITS  
7 RESERVATION OF WATER; TO REQUIRE THE DEPARTMENT OF NATURAL  
8 RESOURCES AND CONSERVATION TO COMPLY WITH A REQUEST FOR  
9 ASSISTANCE BY A DISTRICT WITHIN 12 MONTHS; AMENDING SECTION  
10 85-2-316, MCA."

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

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

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

21 (2) Upon receiving an application, the department  
22 shall proceed in accordance with 85-2-307 through 85-2-309.  
23 After the hearing provided in 85-2-309, the board shall  
24 decide whether to reserve the water for the applicant. The  
25 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 May  
20 9, 1979, for maintenance of minimum flow, level, or quality  
21 of water that it awards at any point on a stream or river to  
22 a maximum of 50% of the average annual flow of record on  
23 gauged streams. Ungauged streams can be allocated at the  
24 discretion of the board.

25 (6) 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 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, WITHIN ITS  
 17 STAFFING AND BUDGETING LIMITATIONS, complete any feasibility  
 18 study requested by the districts within 12 months of the  
 19 time the request was made. The board shall extend the time  
 20 allowed to develop a plan identifying projects for utilizing  
 21 a district's reservation so long as the conservation  
 22 district makes a good faith effort, within its staffing and  
 23 budget limitations, to develop a plan.

24 (8) A reservation under this section shall date from  
 25 the date the order reserving the water is adopted by the

1 board and shall not adversely affect any rights in existence  
 2 at that time.

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

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

25 (11) Nothing in this section vests the board with the

HB 0494/02

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

-End-

## 1 HOUSE BILL NO. 494

2 INTRODUCED BY CURTISS, ASAY

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE THE BOARD OF  
5 NATURAL RESOURCES AND CONSERVATION TO ALLOW ADEQUATE TIME  
6 FOR A CONSERVATION DISTRICT TO DEVELOP A PLAN TO UTILIZE ITS  
7 RESERVATION OF WATER; TO REQUIRE THE DEPARTMENT OF NATURAL  
8 RESOURCES AND CONSERVATION TO COMPLY WITH A REQUEST FOR  
9 ASSISTANCE BY A DISTRICT WITHIN 12 MONTHS; AMENDING SECTION  
10 85-2-316, MCA."

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

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

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

21 (2) Upon receiving an application, the department  
22 shall proceed in accordance with 85-2-307 through 85-2-309.  
23 After the hearing provided in 85-2-309, the board shall  
24 decide whether to reserve the water for the applicant. The  
25 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 May  
20 9, 1979, for maintenance of minimum flow, level, or quality  
21 of water that it awards at any point on a stream or river to  
22 a maximum of 50% of the average annual flow of record on  
23 gauged streams. Ungauged streams can be allocated at the  
24 discretion of the board.

25 (6) 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 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 WITHIN THE  
 15 DEPARTMENT'S STAFFING AND BUDGETING LIMITATIONS in the  
 16 preparation and processing of such applications for the  
 17 conservation districts. The department shall, WITHIN ITS  
 18 STAFFING AND BUDGETING LIMITATIONS, complete any feasibility  
 19 study requested by the districts within 12 months of the  
 20 time the request was made. The board shall extend the time  
 21 allowed to develop a plan identifying projects for utilizing  
 22 a district's reservation so long as the conservation  
 23 district makes a good faith effort, within its staffing and  
 24 budget limitations, to develop a plan.

25 (8) A reservation under this section shall date from

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

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

9 (10) The board may modify an existing or future order  
 10 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.  
 14 Reallocation of reserved water may be made by the board  
 15 following notice and hearing wherein the board finds that  
 16 all or part of the reservation is not required for its  
 17 purpose and that the need for the reallocation has been  
 18 shown by the applicant to outweigh the need shown by the  
 19 original reservant. Reallocation of reserved water shall not  
 20 adversely affect the priority date of the reservation, and  
 21 the reservation shall retain its priority date despite  
 22 reallocation to a different entity for a different use. The  
 23 board may not reallocate water reserved under this section  
 24 on any stream or river more frequently than once every 5  
 25 years.

HB 0494/03

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

-End-

March 10, 1981

SENATE STANDING COMMITTEE REPORT  
(Agriculture, Livestock & Irrigation)

That House Bill No. 494 be amended as follows:

1. Page 3, line 14.

Following: "~~limitations~~"

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