HOUSE BILL NO. 494

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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 S	BENATE
February 20, 1981	Introduced and referred to Committee on Agriculture, Livestock and Irrigation.
March 10, 1981	Committee recommend bill be con- curred 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 con- curred in.

March 20, 1981

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

Reported correctly enrolled.

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1 HOUSE BILL NO. 494 INTRODUCED BY Curtur Clony 2 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: Section 1. Section 85-2-316, MCA, is amended to read: 13 14 #85-2-316. Reservation of waters. (1) The state or any political subdivision or agency thereof or the United States 15 or any agency thereof may apply to the board to reserve 16 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.

(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 1 2 acting upon the application to reserve water, except the cost of salaries of the department's personnel, shall be 3 paid by the applicant. 4 5 (3) The board may not adopt an order reserving water unless the applicant establishes to the satisfaction of the 6 7 board: 8 (a) the purpose of the reservation; 9 (b) the need for the reservation; (c) the amount of water necessary for the purpose of 10 11 the reservation; (d) that the reservation is in the public interest. 12 (4) If the purpose of the reservation requires 13 construction of a storage or diversion facility, the 14 15 applicant shall establish to the satisfaction of the board that there will be progress toward completion of the 16 facility and accomplishment of the purpose with reasonable 17 diligence in accordance with an established plan. 18 (5) The board shall limit any reservations after May 19 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.

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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.

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 department4s--staffing--and--budgeting--limitations in the 14 preparation and processing of such applications for the 15 conservation districts. <u>The department shall complete any</u> 16 17 feasibility_study_requested_by_the_districts_within_12 18 months of the time the request was made. The board shall extend the time allowed to develop a plan identifying 19 20 projects for utilizing a district's reservation so long as the conservation district makes a good faith effort, within 21 22 its staffing and budget limitations. to develop a plan.

(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

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 original reservant. Reallocation of reserved water shall not 17 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 the25 authority to alter a water right that is not a reservation.

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47th Legislature

HB 0494/02

Approved by the Select Committee on Water

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2	INTRODUCED BY CURTISS, ASAY

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(2) Upon receiving an application, the department
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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.

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.

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SECOND READING

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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.

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 responsible, when requested by the districts, for be 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 STAFFING AND BUDGETING LIMITATIONS, complete any feasibility 17 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 {B} A reservation under this section shall date from25 the date the order reserving the water is adopted by the

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l 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.

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REFERENCE BILL

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-End-

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"