

House Bill 529

In The House

January 28, 1981	Introduced and referred to Committee on Water.
February 21, 1981	Committee recommend bill do pass as amended.
February 23, 1981	Bill printed and placed on members' desks.
February 24, 1981	Second reading do pass.
February 25, 1981	Correctly engrossed.
	Third reading not passed.

1 acting upon the application to reserve water, except the
2 cost of salaries of the department's personnel, shall be
3 paid by the applicant.

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

- 7 (a) the purpose of the reservation;
8 (b) the need for the reservation;
9 (c) the amount of water necessary for the purpose of
10 the reservation;
11 (d) that the reservation is in the public interest;
12 ~~(e) that, in the case of reservation of waters to~~
13 ~~maintain a minimum flow, level, or quality of water, there~~
14 ~~is or will be made available sufficient unappropriated water~~
15 ~~to satisfy the reservation during the period or length of~~
16 ~~time during which the reservation is sought or designated by~~
17 ~~the board.~~

18 (4) In the case of all reservations, regardless of
19 when granted, of water to maintain a minimum flow, level, or
20 quality of water, the board shall require, as a condition of
21 granting such reservation or the continuance thereof, that
22 the entity holding such reservation either prove to the
23 board that there is sufficient unappropriated water to fully
24 satisfy such reservation or make provision for the
25 development and maintenance of off-stream storage facilities

1 for the purpose of low flow infusion sufficient to maintain
2 the minimum flow, level, or quality of water to the extent
3 granted in the reservation, after prior existing water
4 rights have been satisfied. For purposes of this subsection,
5 amounts of water reserved for minimum flow may be diverted
6 and stored for the purpose of such low flow infusion, when
7 practicable, such storage sites and the waters stored
8 therein shall be utilized as multiple-use facilities,
9 including but not limited to fish and wildlife, stockwater,
10 recreation, irrigation, and industrial uses, and municipal
11 water supply augmentation. If the purpose of the reservation
12 requires construction of a storage or diversion facility,
13 the applicant or holder shall establish to the satisfaction
14 of the board that there will be progress toward completion
15 of the facility and accomplishment of the purpose with
16 reasonable diligence in accordance with an established plan.
17 (5) The board, in addition to the provisions of
18 subsection (4), shall limit any reservations after May 9,
19 1979, for maintenance of minimum flow, level, or quality of
20 water that it awards at any point on a stream or river to a
21 maximum of 50% of the average annual flow of record on
22 gauged streams. Ungauged streams can be allocated at the
23 discretion of the board, subject to the provisions of
24 subsection (4).

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 for rendering technical and administrative
13 assistance within the department's staffing and budgeting
14 limitations in the processing of such applications for the
15 conservation districts.

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

20 (9) The board shall, periodically but at least once
21 every 10 years, review existing reservations to ensure that
22 the objectives of the reservation ~~and the conditions of~~
23 ~~subsection (4)~~ are being met. Where the objectives of the
24 reservation ~~or the conditions of subsection (4)~~ are not
25 being met, the board may extend, revoke, or modify the

1 reservation.

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

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

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

-End-

Approved by the Select
Committee on Water

HOUSE BILL NO. 529

INTRODUCED BY ROTH, CURTISS,
VINGER, HURWITZ, THOFT, CONROY

A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE APPLICANTS
FOR ~~AND HOLDERS OF~~ RESERVATIONS OF WATER ~~TO MAINTAIN MINIMUM~~
~~FLOW OR QUALITY~~ TO PROVE THAT SUFFICIENT UNAPPROPRIATED
WATER IS ~~OR WILL BE MADE~~ AVAILABLE TO SATISFY THE
RESERVATION; TO ALLOW THE BOARD OF NATURAL RESOURCES AND
CONSERVATION TO REQUIRE THAT OFFSTREAM OR TRIBUTARY STORAGE
BE CONSTRUCTED TO SATISFY INSTREAM RIGHTS; AMENDING SECTION
85-2-316, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, the legislature finds that certain
reservations of water have been made, under the provisions
of section 85-2-316, MCA, to maintain a minimum flow, level,
or quality of water, whereby the applicant has established
the purpose of the reservation, the need for the
reservation, and the amount of water necessary for the
purpose of the reservation but without establishing that
there is either sufficient unappropriated water to satisfy
the reservation or providing a means whereby there would be
sufficient unappropriated water to satisfy the reservation;
and

WHEREAS, in order to provide for the orderly

administration of the waters of this state and to facilitate
and preserve the purpose of allowing reservation of waters
to maintain a minimum flow or quality of waters to the
detriment of future consumptive uses of water in the state,
the legislature finds it necessary that the applicant or
holder of a reservation of water to maintain a minimum flow,
level, or quality be required, as a condition of either
receiving or continuing to hold such reservation, to either
establish that there is sufficient unappropriated water to
satisfy such reservation or to provide a means whereby there
will be sufficient unappropriated water to satisfy such
reservation.

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

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

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

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

- 10 (a) the purpose of the reservation;
- 11 (b) the need for the reservation;
- 12 (c) the amount of water necessary for the purpose of
- 13 the reservation;

14 (d) that the reservation is in the public interest;

15 ~~(e) that, in the case of reservation of waters to~~
 16 ~~maintain a minimum flow, level, or quality of waters, there~~
 17 ~~is or will be made available sufficient unappropriated water~~
 18 ~~to satisfy the reservation during the period or length of~~
 19 ~~time during which the reservation is sought, or designated~~
 20 ~~by the board.~~

21 (4) (A) ~~In the case of all reservations, regardless of~~
 22 ~~when granted, of water to maintain a minimum flow, level, or~~
 23 ~~quality of water, the board shall MAY require, as a~~
 24 ~~condition of granting such reservation or the continuance~~
 25 ~~thereof, that the entity holding such reservation either~~

1 ~~prove to the board that there is sufficient unappropriated~~
 2 ~~water to fully satisfy such reservation or make provision~~
 3 ~~for the development and maintenance of off-stream OR~~
 4 ~~TRIBUTARY storage facilities for the purpose of low flow~~
 5 ~~infusion sufficient to maintain the minimum flow, level, or~~
 6 ~~quality of water to the extent granted in the reservation~~
 7 ~~after prior existing water rights have been satisfied, for~~
 8 ~~purposes of this subsection; amounts of water reserved for~~
 9 ~~minimum flow may be diverted and stored for the purpose of~~
 10 ~~such low flow infusion.~~

11 (B) THE BOARD SHALL CONSIDER THE FOLLOWING FACTORS IN
 12 DETERMINING THE NEED TO REQUIRE OFFSTREAM OR TRIBUTARY
 13 STORAGE FOR THE PURPOSE OF LOW-FLOW INFUSION TO MAINTAIN AN
 14 INSTREAM RESERVED RIGHT:

- 15 (I) WATER SHORTAGES THAT CURRENTLY EXIST IN A STREAM;
- 16 (II) FREQUENCY OF LOW-FLOW OCCURRENCES IN A STREAM;
- 17 (III) THE COST OF THE OFFSTREAM OR TRIBUTARY STORAGE;
- 18 (IV) THE NEED TO AUGMENT STREAM FLOWS TO MAINTAIN WATER
- 19 QUALITY AND AQUATIC ECOSYSTEMS;
- 20 (V) THE COST OF THE OFFSTREAM STORAGE;
- 21 (VI) WHETHER FUNDS ARE AVAILABLE OR WILL BECOME
- 22 AVAILABLE TO CONSTRUCT THE STORAGE FACILITY;
- 23 (VII) THE ECONOMIC LAND BASE DISPLACED OR INUNDATED BY
- 24 THE OFFSTREAM OR TRIBUTARY STORAGE; AND
- 25 (VIII) ANY OTHER FACTORS THE BOARD CONSIDERS PERTINENT.

1 (C) When practicable, such storage sites and the waters
 2 stored therein shall be utilized as multiple-use facilities,
 3 including but not limited to fish and wildlife, stockwater,
 4 recreation, irrigation, and industrial uses, and municipal
 5 water supply augmentation. If the purpose of the reservation
 6 requires construction of a storage or diversion facility,
 7 the applicant ~~or holder~~ shall establish to the satisfaction
 8 of the board that there will be progress toward completion
 9 of the facility and accomplishment of the purpose with
 10 reasonable diligence in accordance with an established plan.

11 (5) The board, in addition to the provisions of
 12 subsection (4), shall limit any reservations after May 9,
 13 1979, for maintenance of minimum flow, level, or quality of
 14 water that it awards at any point on a stream or river to a
 15 maximum of 50% of the average annual flow of record on
 16 gauged streams. Ungauged streams can be allocated at the
 17 discretion of the board, subject to the provisions of
 18 subsection (4).

19 (6) After the adoption of an order reserving waters,
 20 the department may reject an application and refuse a permit
 21 for the appropriation of reserved waters or may, with the
 22 approval of the board, issue the permit subject to such
 23 terms and conditions it considers necessary for the
 24 protection of the objectives of the reservation.

25 (7) Any person desiring to use water reserved to a

1 conservation district for agricultural purposes shall make
 2 application for such use with the district, and the district
 3 upon approval of the application must inform the department
 4 of the approved use. The department shall maintain records
 5 of all uses of water reserved to conservation districts and
 6 be responsible for rendering technical and administrative
 7 assistance within the department's staffing and budgeting
 8 limitations in the processing of such applications for the
 9 conservation districts.

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

14 (9) The board shall, periodically but at least once
 15 every 10 years, review existing reservations to ensure that
 16 the objectives of the reservation and the conditions of
 17 subsection (4) are being met. Where the objectives of the
 18 reservation or the conditions of subsection (4) are not
 19 being met, the board may extend, revoke, or modify the
 20 reservation.

21 (10) The board may modify an existing or future order
 22 originally adopted to reserve water for the purpose of
 23 maintaining minimum flow, level, or quality of water, so as
 24 to reallocate such reservation or portion thereof to an
 25 applicant who is a qualified reservant under this section.

1 Reallocation of reserved water may be made by the board
2 following notice and hearing wherein the board finds that
3 all or part of the reservation is not required for its
4 purpose and that the need for the reallocation has been
5 shown by the applicant to outweigh the need shown by the
6 original reservant. WHEN APPROVED BY THE BOARD, WATER
7 RESERVED FOR MINIMUM FLOW MAY BE DIVERTED AND STORED FOR THE
8 PURPOSE OF LOW FLOW INFUSION. Reallocation of reserved water
9 shall not adversely affect the priority date of the
10 reservation, and the reservation shall retain its priority
11 date despite reallocation to a different entity for a
12 different use. The board may not reallocate water reserved
13 under this section on any stream or river more frequently
14 than once every 5 years.

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

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

-End-

1 HOUSE BILL NO. 529

2 INTRODUCED BY ROTH, CURTISS,

3 VINGER, HURWITZ, THOFT, CONROY

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE APPLICANTS
6 FOR ~~AND HOLDERS OF~~ RESERVATIONS OF WATER ~~TO MAINTAIN MINIMUM~~
7 ~~FLOW OR QUALITY~~ TO PROVE THAT SUFFICIENT UNAPPROPRIATED
8 WATER IS ~~OR WILL BE MADE~~ AVAILABLE TO SATISFY THE
9 RESERVATION; TO ALLOW THE BOARD OF NATURAL RESOURCES AND
10 CONSERVATION TO REQUIRE THAT OFFSTREAM OR TRIBUTARY STORAGE
11 BE CONSTRUCTED TO SATISFY INSTREAM RIGHTS; AMENDING SECTION
12 85-2-316, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."
13

14 WHEREAS, the Legislature finds that certain
15 reservations of water have been made, under the provisions
16 of section 85-2-316, MCA, to maintain a minimum flow, level,
17 or quality of water, whereby the applicant has established
18 the purpose of the reservation, the need for the
19 reservation, and the amount of water necessary for the
20 purpose of the reservation but without establishing that
21 there is either sufficient unappropriated water to satisfy
22 the reservation or providing a means whereby there would be
23 sufficient unappropriated water to satisfy the reservation;
24 and

25 WHEREAS, in order to provide for the orderly

1 administration of the waters of this state and to facilitate
2 and preserve the purpose of allowing reservation of waters
3 to maintain a minimum flow or quality of waters to the
4 detriment of future consumptive uses of water in the state,
5 the Legislature finds it necessary that the applicant or
6 holder of a reservation of water to maintain a minimum flow,
7 level, or quality be required, as a condition of either
8 receiving or continuing to hold such reservation, to either
9 establish that there is sufficient unappropriated water to
10 satisfy such reservation or to provide a means whereby there
11 will be sufficient unappropriated water to satisfy such
12 reservation.

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

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

23 (2) Upon receiving an application, the department
24 shall proceed in accordance with 85-2-307 through 85-2-309.
25 After the hearing provided in 85-2-309, the board shall

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

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

- 10 (a) the purpose of the reservation;
- 11 (b) the need for the reservation;
- 12 (c) the amount of water necessary for the purpose of
- 13 the reservation;

14 (d) that the reservation is in the public interest;

15 ~~(e) that, in the case of reservation of waters to~~
 16 ~~maintain a minimum flow level or quality of waters there~~
 17 ~~is or will be made available sufficient unappropriated water~~
 18 ~~to satisfy the reservation during the period or length of~~
 19 ~~time during which the reservation is sought, or designated~~
 20 ~~by the board;~~

21 (4) (A) ~~In the case of all reservations, regardless of~~
 22 ~~when granted, of water to maintain a minimum flow, level, or~~
 23 ~~quality of water, the board shall MAY require, as a~~
 24 ~~condition of granting such reservation or the continuance~~
 25 ~~thereof that the entity holding such reservation either~~

1 ~~prove to the board that there is sufficient unappropriated~~
 2 ~~water to fully satisfy such reservation or make provision~~
 3 ~~for the development and maintenance of off-stream OR~~
 4 ~~TRIBUTARY storage facilities for the purpose of low flow~~
 5 ~~infusion sufficient to maintain the minimum flow, level, or~~
 6 ~~quality of water to the extent granted in the reservation~~
 7 ~~after prior existing water rights have been satisfied, for~~
 8 ~~purposes of this subsection, amounts of water reserved for~~
 9 ~~minimum flow may be diverted and stored for the purpose of~~
 10 ~~such low flow infusion.~~

11 (B) ~~THE BOARD SHALL CONSIDER THE FOLLOWING FACTORS IN~~
 12 ~~DETERMINING THE NEED TO REQUIRE OFFSTREAM OR TRIBUTARY~~
 13 ~~STORAGE FOR THE PURPOSE OF LOW-FLOW INFUSION TO MAINTAIN AN~~
 14 ~~INSTREAM RESERVED RIGHT:~~

- 15 (I) ~~WATER SHORTAGES THAT CURRENTLY EXIST IN A STREAM;~~
- 16 (II) ~~FREQUENCY OF LOW-FLOW OCCURRENCES IN A STREAM;~~
- 17 (III) ~~THE COST OF THE OFFSTREAM OR TRIBUTARY STORAGE;~~
- 18 (IV) ~~THE NEED TO AUGMENT STREAM FLOWS TO MAINTAIN WATER~~
 19 ~~QUALITY AND AQUATIC ECOSYSTEMS;~~
- 20 (V) ~~THE COST OF THE OFFSTREAM STORAGE;~~
- 21 (VI) ~~WHETHER FUNDS ARE AVAILABLE OR WILL BECOME~~
 22 ~~AVAILABLE TO CONSTRUCT THE STORAGE FACILITY;~~
- 23 (VII) ~~THE ECONOMIC LAND BASE DISPLACED OR INUNDATED BY~~
 24 ~~THE OFFSTREAM OR TRIBUTARY STORAGE; AND~~
- 25 (VIII) ~~ANY OTHER FACTORS THE BOARD CONSIDERS PERTINENT.~~

1 (C) When practicable, such storage sites and the waters
 2 stored therein shall be utilized as multiple-use facilities,
 3 including but not limited to fish and wildlife, stockwater,
 4 recreation, irrigation, and industrial uses, and municipal
 5 water supply augmentation. If the purpose of the reservation
 6 requires construction of a storage or diversion facility,
 7 the applicant ~~or holder~~ shall establish to the satisfaction
 8 of the board that there will be progress toward completion
 9 of the facility and accomplishment of the purpose with
 10 reasonable diligence in accordance with an established plan.

11 (5) The board, in addition to the provisions of
 12 subsection (4), shall limit any reservations after May 9,
 13 1979, for maintenance of minimum flow, level, or quality of
 14 water that it awards at any point on a stream or river to a
 15 maximum of 50% of the average annual flow of record on
 16 gauged streams. Ungauged streams can be allocated at the
 17 discretion of the board, subject to the provisions of
 18 subsection (4).

19 (6) After the adoption of an order reserving waters,
 20 the department may reject an application and refuse a permit
 21 for the appropriation of reserved waters or may, with the
 22 approval of the board, issue the permit subject to such
 23 terms and conditions it considers necessary for the
 24 protection of the objectives of the reservation.

25 (7) Any person desiring to use water reserved to a

1 conservation district for agricultural purposes shall make
 2 application for such use with the district, and the district
 3 upon approval of the application must inform the department
 4 of the approved use. The department shall maintain records
 5 of all uses of water reserved to conservation districts and
 6 be responsible for rendering technical and administrative
 7 assistance within the department's staffing and budgeting
 8 limitations in the processing of such applications for the
 9 conservation districts.

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

14 (9) The board shall, periodically but at least once
 15 every 10 years, review existing reservations to ensure that
 16 the objectives of the reservation and the conditions of
 17 subsection (4) are being met. Where the objectives of the
 18 reservation or the conditions of subsection (4) are not
 19 being met, the board may extend, revoke, or modify the
 20 reservation.

21 (10) The board may modify an existing or future order
 22 originally adopted to reserve water for the purpose of
 23 maintaining minimum flow, level, or quality of water, so as
 24 to reallocate such reservation or portion thereof to an
 25 applicant who is a qualified reservant under this section.

1 Reallocation of reserved water may be made by the board
2 following notice and hearing wherein the board finds that
3 all or part of the reservation is not required for its
4 purpose and that the need for the reallocation has been
5 shown by the applicant to outweigh the need shown by the
6 original reservant. WHEN APPROVED BY THE BOARD, WATER
7 RESERVED FOR MINIMUM FLOW MAY BE DIVERTED AND STORED FOR THE
8 PURPOSE OF LOW FLOW INFUSION. Reallocation of reserved water
9 shall not adversely affect the priority date of the
10 reservation, and the reservation shall retain its priority
11 date despite reallocation to a different entity for a
12 different use. The board may not reallocate water reserved
13 under this section on any stream or river more frequently
14 than once every 5 years.

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

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

-End-