

House Bill 670

In The House

February 6, 1981

Introduced and referred  
to Committee on Water.

April 23, 1981

Died in Committee.

1 HOUSE BILL NO. 670

2 INTRODUCED BY *Curtis Roth* *B. B. Bennett*  
3 *McCallum* *Hoffman* *Boylan*

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ENSURE EFFECTIVE  
5 UTILIZATION OF POTENTIAL OF THE AGRICULTURAL LANDS IN  
6 MONTANA BY RESERVING LIMITED AMOUNTS OF GROUND WATER  
7 NECESSARY FOR THEIR CONTINUED DEVELOPMENT; AMENDING SECTIONS  
8 85-2-401 AND 85-2-508, MCA."

9  
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 NEW SECTION. Section 1. Reservation of ground water  
12 -- agricultural usage. There is reserved 3 acre feet of  
13 ground water per year per acre less existing water rights  
14 available per acre for the lands in Montana that are  
15 susceptible to the pursuit of agriculture and economically  
16 feasible to irrigate. The water right reservation is granted  
17 to the department as trustee for the landowners whose  
18 property will benefit from the reservation.

19 NEW SECTION. Section 2. Application -- hearing --  
20 assigning water reservation. (1) At any time before January  
21 1, 2000, an owner of land that qualifies under [section 1]  
22 and is prepared to develop the reserved ground water may  
23 apply to the department for transfer of the reserved ground  
24 water to the landowner. The department shall provide notice  
25 of the application under 85-2-307. If an objection is made

1 to an application, the department shall hold a hearing.  
2 (2) The department may diminish the reservation if an  
3 objector establishes any of the following:  
4 (a) The withdrawal would be beyond the capacity of the  
5 aquifer or aquifers in the ground-water area to yield ground  
6 water without adversely affecting the property, rights, or  
7 interests of a holder of a prior existing water right or  
8 reservation.  
9 (b) The proposed means of appropriation are  
10 inadequate.  
11 (c) The project is not economically feasible.  
12 (3) Whenever the department concurs in an objection,  
13 the department shall assist, whenever possible, in modifying  
14 the reservation to conform to the objection.  
15 (4) If the department grants an application under  
16 subsection (1), the department shall assign the reserved  
17 ground water to the landowner. The landowner shall timely  
18 construct the necessary improvements to withdraw the ground  
19 water and place it to beneficial use.  
20 (5) Upon placing the water to beneficial use, it shall  
21 have a priority equal to the date of the reservation. The  
22 right to the use of the water under a reservation granted  
23 under this section passes with a conveyance of the land.  
24 Section 3. Section 85-2-401, MCA, is amended to read:  
25 "85-2-401. Priority. (1) As between appropriators, the

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1 first in time is the first in right. Priority of  
 2 appropriation does not include the right to prevent changes  
 3 by later appropriators in the condition of water occurrence,  
 4 such as the increase or decrease of streamflow or the  
 5 lowering of a water table, artesian pressure, or water  
 6 level, if the prior appropriator can reasonably exercise his  
 7 water right under the changed conditions.

8 (2) Priority of appropriation made under this chapter  
 9 dates from the filing of an application for a permit with  
 10 the department, except as otherwise provided in 85-2-301  
 11 through 85-2-303, 85-2-306, 85-2-310(3), and 85-2-313, ~~and~~  
 12 ~~[section 2]~~.

13 (3) Priority of appropriation perfected before July 1,  
 14 1973, shall be determined as provided in part 2 of this  
 15 chapter."

16 Section 4. Section 85-2-508, MCA, is amended to read:

17 "85-2-508. Controlled groundwater areas -- permits to  
 18 appropriate. A person may appropriate groundwater in a  
 19 controlled area only by applying for and receiving a permit  
 20 ~~or reservation~~ from the department in accordance with part 3  
 21 of this chapter ~~or, for reservations, [sections 1 and 2]~~.  
 22 The department may not grant a permit if the withdrawal  
 23 would be beyond the capacity of the aquifer or aquifers in  
 24 the groundwater area to yield groundwater within a  
 25 reasonable or feasible pumping lift (in the case of pumping

1 developments) or within a reasonable or feasible reduction  
 2 of pressure (in the case of artesian developments)."

3 Section 5. Codification instruction. Sections 1 and 2  
 4 are intended to be codified as an integral part of Title 35,  
 5 chapter 2, and the provisions of Title 35, chapter 2, apply  
 6 to sections 1 and 2.

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