

Senate Bill 285

In The Senate

January 26, 1981	Introduced and referred to Committee on Agriculture, Livestock and Irrigation.
February 4, 1981	Committee recommend bill do pass.
February 5, 1981	Bill printed and placed on members' desks.
February 6, 1981	Second reading do pass.
February 7, 1981	Correctly engrossed.
February 9, 1981	Third reading passed.

In The House

February 10, 1981	Introduced and referred to Committee on Water.
March 28, 1981	Committee recommend bill not concurred.

In The Senate

March 31, 1981	Returned from House not concurred.
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1 State BILL NO. 285  
 2 INTRODUCED BY Stuy  
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4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROHIBIT THE BOARD  
 5 OF NATURAL RESOURCES AND CONSERVATION FROM GRANTING A  
 6 MINIMUM FLOW RESERVATION A PREFERENCE OVER OR PRIORITY DATE  
 7 EARLIER THAN AN AGRICULTURAL RESERVATION CONSIDERED  
 8 CONCURRENTLY; TO REQUIRE THE BOARD TO CONFORM PRESENT  
 9 RESERVATIONS TO THAT PROVISION; AMENDING SECTION 85-2-316,  
 10 MCA."

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 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. ~~The board may not grant a~~  
 25 ~~reservation for maintenance of minimum flow, level, or~~

1 ~~quality of water a preference over or an earlier priority~~  
 2 ~~date than a reservation for agricultural purposes if the~~  
 3 ~~reservations are acted on concurrently. The board shall,~~  
 4 ~~pursuant to subsection (10), modify a reservation granted~~  
 5 ~~prior to [the effective date of this act] as necessary to~~  
 6 ~~bring it into conformity with this subsection. That~~  
 7 ~~modification does not count against the limit on the~~  
 8 ~~frequency of reallocation in subsection (10).~~

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

15 (7) Any person desiring to use water reserved to a  
 16 conservation district for agricultural purposes shall make  
 17 application for such use with the district, and the district  
 18 upon approval of the application must inform the department  
 19 of the approved use. The department shall maintain records  
 20 of all uses of water reserved to conservation districts and  
 21 be responsible for rendering technical and administrative  
 22 assistance within the department's staffing and budgeting  
 23 limitations in the processing of such applications for the  
 24 conservation districts.

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.

LC 2063/01

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

3           Section 2. Severability. If a part of this act is  
4 invalid, all valid parts that are severable from the invalid  
5 part remain in effect. If a part of this act is invalid in  
6 one or more of its applications, the part remains in effect  
7 in all valid applications that are severable from the  
8 invalid applications.

-End-

Approved by Committee  
on Agriculture Livestock  
& Irrigation

*Senate*  
*Story* BILL NO. 285

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21 (2) Upon receiving an application, the department  
22 shall proceed in accordance with 85-2-307 through 85-2-309.  
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3 cost of salaries of the department's personnel, shall be  
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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  
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*Senators* BILL NO. *285*  
*Stacy*

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