HOUSE BILL NO. 408

INTRODUCED BY IVERSON, GALT, MARKS, ECK

BY REQUEST OF THE WATER POLICY COMMITTEE

IN THE HOUSE

- JANUARY 21, 1987 ON MOTION, RULES SUSPENDED TO ALLOW INTRODUCTION OF HOUSE BILL NO. 408.
- JANUARY 22, 1987 INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
- FEBRUARY 4, 1987 COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.

PRINTING REPORT.

- FEBRUARY 6, 1987 SECOND READING, DO PASS.
- FEBRUARY 7, 1987 ENGROSSING REPORT.

THIRD READING, PASSED. AYES, 99; NOES, 0.

TRANSMITTED TO SENATE.

IN THE SENATE

- FEBRUARY 10, 1987 INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
- MARCH 10, 1987 COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.

MARCH 13, 1987 SECOND READING, CONCURRED IN.

MARCH 16, 1987 THIRD READING, CONCURRED IN. AYES, 50; NOES, 0.

RETURNED TO HOUSE.

IN THE HOUSE

MARCH 17, 1987

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RECEIVED FROM SENATE.

SENT TO ENROLLING.

INTRODUCED BY fileson Min the 1 2 3 BY REQUEST OF THE WATER POLICY COMMITTEE 4 5 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT WATER MAY BE RESERVED FOR EXISTING OR FUTURE BENEFICIAL USES ONLY 6 7 IN THE BASIN WHERE IT IS RESERVED UNLESS WATER PROPOSED FOR 8 A BENEFICIAL USE OUTSIDE THE BASIN WHERE THE DIVERSION OCCURS IS NOT REASONABLY AVAILABLE UNDER THE WATER LEASING 9 10 PROGRAM; AND AMENDING SECTION 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) (a) Water may be reserved only for existing or 22 future beneficial uses in the following-river-basins basin 23 where it is reserved, as described by the following basins:

the Clark Fork River and its tributaries to its
 confluence with Lake Pend Oreille in Idaho;

N Iontana Legislative Council

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1 (b)(ii) the Kootenai River and its tributaries to its 2 confluence with Kootenay Lake in British Columbia; 3 (iii) the St. Mary River and its tributaries to its confluence with the Oldman River in Alberta; 4 fd (iv) the Little Missouri River and its tributaries 5 to its confluence with Lake Sakakawea in North Dakota; 6 tet(v) the Missouri River and its tributaries to its 7 confluence with the Yellowstone River in North Dakota: and я 9 (f)(vi) the Yellowstone River and its tributaries to 10 its confluence with the Missouri River in North Dakota. 11 (b) A water reservation may be made for an existing or 12 future beneficial use outside the basin where the diversion 13 occurs only if stored water is not reasonably available for 14 water leasing under 85-2-141 and the proposed use would 15 occur in a basin designated in subsection (2)(a). 16 (3) Upon receiving an application, the department 17 shall proceed in accordance with 85-2-307 through 85-2-309. 18 After the hearing provided in 85-2-309, the board shall decide whether to reserve the water for the applicant. The 19 department's costs of giving notice, holding the hearing, 20 conducting investigations, and making records incurred in 21 acting upon the application to reserve water, except the 22 cost of salaries of the department's personnel, shall be 23 paid by the applicant. In addition, a reasonable proportion 24

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of the department's cost of preparing an environmental

INTRODUCED BILL

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impact statement shall be paid by the applicant unless
 waived by the department upon a showing of good cause by the
 applicant.

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

7 (i) the purpose of the reservation;

8 (ii) the need for the reservation;

9 (iii) the amount of water necessary for the purpose of10 the reservation;

11 (iv) that the reservation is in the public interest.

12 (b) In determining the public interest under 13 subsection (4)(a)(iv), the board may not adopt an order 14 reserving water for withdrawal and transport for use outside 15 the state unless the applicant proves by clear and 16 convincing evidence that:

17 (i) the proposed out-of-state use of water is not 18 contrary to water conservation in Montana; and

(ii) the proposed out-of-state use of water is not
otherwise detrimental to the public welfare of the citizens
of Montana.

(c) In determining whether the applicant has proved by
clear and convincing evidence that the requirements of
subsections (4)(b)(i) and (4)(b)(ii) are met, the board
shall consider the following factors:

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application could feasibly be transported to alleviate water 4 5 shortages within the state of Montana; 6 (iii) the supply and sources of water available to the applicant in the state where the applicant intends to use 7 8 the water: and (iv) the demands placed on the applicant's supply in 9 10 the state where the applicant intends to use the water. 11 (d) When applying for a reservation to withdraw and 12 transport water for use outside the state, the applicant 13 shall submit to and comply with the laws of the state of Montana governing the appropriation, lease, use, and 14 15 reservation of water. (5) If the purpose of the reservation requires 16 17 construction of a storage or diversion facility, the applicant shall establish to the satisfaction of the board 18 19 that there will be progress toward completion of the facility and accomplishment of the purpose with reasonable 20 21 diligence in accordance with an established plan.

(i) whether there are present or projected water

(ii) whether the water that is the subject of the

shortages within the state of Montana;

(6) The board shall limit any reservations after May
9, 1979, for maintenance of minimum flow, level, or quality
of water that it awards at any point on a stream or river to
a maximum of 50% of the average annual flow of record on

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3 (7) After the adoption of an order reserving waters, 4 the department may reject an application and refuse a permit 5 for the appropriation of reserved waters or may, with the 6 approval of the board, issue the permit subject to such 7 terms and conditions it considers necessary for the 8 protection of the objectives of the reservation.

9 (8) Any person desiring to use water reserved to a conservation district for agricultural purposes shall make 10 11 application for such use with the district, and the district 12 upon approval of the application must inform the department 13 of the approved use. The department shall maintain records 14 of all uses of water reserved to conservation districts and 15 be responsible, when requested by the districts, for 16 rendering technical and administrative assistance within the 17 department's staffing and budgeting limitations in the 18 preparation and processing of such applications for the 19 conservation districts. The department shall, within its 20 staffing and budgeting limitations, complete any feasibility 21 study requested by the districts within 12 months of the 22 time the request was made. The board shall extend the time 23 allowed to develop a plan identifying projects for utilizing a district's reservation so long as the conservation 24 25 district makes a good faith effort, within its staffing and

budget limitations, to develop a plan.

2 (9) A reservation under this section shall date from
3 the date the order reserving the water is adopted by the
4 board and shall not adversely affect any rights in existence
5 at that time.

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

(11) The board may modify an existing or future order 11 originally adopted to reserve water for the purpose of 12 maintaining minimum flow, level, or quality of water, so as 13 to reallocate such reservation or portion thereof to an 14 15 applicant who is a qualified reservant under this section. Reallocation of reserved water may be made by the board 16 17 following notice and hearing wherein the board finds that 18 all or part of the reservation is not required for its 19 purpose and that the need for the reallocation has been shown by the applicant to outweigh the need shown by the 20 21 original reservant. Reallocation of reserved water shall not adversely affect the priority date of the reservation, and 22 the reservation shall retain its priority date despite 23 reallocation to a different entity for a different use. The 24 25 board may not reallocate water reserved under this section

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-6-

on any stream or river more frequently than once every 5
 years.

3 (12) Nothing in this section vests the board with the 4 authority to alter a water right that is not a reservation. 5 (13) The department shall undertake a program to educate the public, other state agencies, and political 6 7 subdivisions of the state as to the benefits of the reservation process and the procedures to be followed to 8 9 secure the reservation of water. The department shall 10 provide technical assistance to other state agencies and political subdivisions in applying for reservations under 11 12 this section.

13 (14) Water reserved under this section is not subject
14 to the state water leasing program established under
15 85-2-141."

16 <u>NEW SECTION.</u> Section 2. Extension of authority. Any
17 existing authority of the board of natural resources and
18 conservation to make rules on the subject of the provisions
19 of this act is extended to the provisions of this act.

-End-

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50th Legislature

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APPROVED BY COMM. ON Natural resources

House BILL NO. 401 1 INTRODUCED BY 2 3 BY REQUEST OF THE WATER POLICY COMMITTEE 4 5 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT WATER б MAY BE RESERVED FOR EXISTING OR FUTURE BENEFICIAL USES ONLY 7 IN THE BASIN WHERE IT IS RESERVED UNLESS WATER PROPOSED FOR A BENEFICIAL USE OUTSIDE THE BASIN WHERE THE DIVERSION 8 9 OCCURS IS NOT REASONABLY AVAILABLE UNDER THE WATER LEASING PROGRAM; AND AMENDING SECTION 85-2-316, MCA." 10 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 12 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) (a) Water may be reserved only for existing or 22 future beneficial uses in the following-river-basins basin 23 where it is reserved, as described by the following basins: 24 fa)(i) the Clark Fork River and its tributaries to its 25 confluence with Lake Pend Oreille in Idaho;



1 (ii) the Kootenai River and its tributaries to its 2 confluence with Kootenay Lake in British Columbia; 3 (iii) the St. Mary River and its tributaries to its 4 confluence with the Oldman River in Alberta: 5 {d}(iv) the Little Missouri River and its tributaries 6 to its confluence with Lake Sakakawea in North Dakota: 7 (v) the Missouri River and its tributaries to its 8 confluence with the Yellowstone River in North Dakota; and 9 ff(vi) the Yellowstone River and its tributaries to 10 its confluence with the Missouri River in North Dakota. 11 (b) A water reservation may be made for an existing or 12 future beneficial use outside the basin where the diversion 13 occurs only if stored water is not reasonably available for water leasing under 85-2-141 and the proposed use would 14 15 occur in a basin designated in subsection (2)(a). 16 (3) Upon receiving an application, the department 17 shall proceed in accordance with 85-2-307 through 85-2-309. After the hearing provided in 85-2-309, the board shall 18 19 decide whether to reserve the water for the applicant. The department's costs of giving notice, holding the hearing, 20 21 conducting investigations, and making records incurred in acting upon the application to reserve water, except the 22 23 cost of salaries of the department's personnel, shall be 24 paid by the applicant. In addition, a reasonable proportion

25 of the department's cost of preparing an environmental

-2- SECOND READING HB 408

impact statement shall be paid by the applicant unless
 waived by the department upon a showing of good cause by the
 applicant.

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

(i) the purpose of the reservation;

8 (ii) the need for the reservation;

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9 (iii) the amount of water necessary for the purpose of10 the reservation;

11 (iv) that the reservation is in the public interest.

12 (b) In determining the public interest under 13 subsection (4)(a)(iv), the board may not adopt an order 14 reserving water for withdrawal and transport for use outside 15 the state unless the applicant proves by clear and 16 convincing evidence that:

17 (i) the proposed out-of-state use of water is not18 contrary to water conservation in Montana; and

(ii) the proposed out-of-state use of water is not
otherwise detrimental to the public welfare of the citizens
of Montana.

(c) In determining whether the applicant has proved by
clear and convincing evidence that the requirements of
subsections (4)(b)(i) and (4)(b)(ii) are met, the board
shall consider the following factors:

(i) whether there are present or projected water
 shortages within the state of Montana;

3 (ii) whether the water that is the subject of the
4 application could feasibly be transported to alleviate water
5 shortages within the state of Montana;

6 (iii) the supply and sources of water available to the
7 applicant in the state where the applicant intends to use
8 the water; and

9 (iv) the demands placed on the applicant's supply in
10 the state where the applicant intends to use the water.

11 (d) When applying for a reservation to withdraw and 12 transport water for use outside the state, the applicant 13 shall submit to and comply with the laws of the state of 14 Montana governing the appropriation, lease, use, and 15 reservation of water.

16 (5) If the purpose of the reservation requires 17 construction of a storage or diversion facility, the 18 applicant shall establish to the satisfaction of the board 19 that there will be progress toward completion of the 20 facility and accomplishment of the purpose with reasonable 21 diligence in accordance with an established plan.

(6) The board shall limit any reservations after May
9, 1979, for maintenance of minimum flow, level, or guality
of water that it awards at any point on a stream or river to
a maximum of 50% of the average annual flow of record on

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3 (7) After the adoption of an order reserving waters, 4 the department may reject an application and refuse a permit 5 for the appropriation of reserved waters or may, with the 6 approval of the board, issue the permit subject to such 7 terms and conditions it considers necessary for the 8 protection of the objectives of the reservation.

9 (8) Any person desiring to use water reserved to a conservation district for agricultural purposes shall make 10 11 application for such use with the district, and the district upon approval of the application must inform the department 12 13 of the approved use. The department shall maintain records of all uses of water reserved to conservation districts and 14 15 be responsible, when requested by the districts, for 16 rendering technical and administrative assistance within the 17 department's staffing and budgeting limitations in the preparation and processing of such applications for the 18 conservation districts. The department shall, within its 19 staffing and budgeting limitations, complete any feasibility 20 study requested by the districts within 12 months of the 21 time the request was made. The board shall extend the time 22 23 allowed to develop a plan identifying projects for utilizing a district's reservation so long as the conservation 24 25 district makes a good faith effort, within its staffing and budget limitations, to develop a plan.

2 (9) A reservation under this section shall date from 3 the date the order reserving the water is adopted by the 4 board and shall not adversely affect any rights in existence 5 at that time.

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

11 (11) The board may modify an existing or future order originally adopted to reserve water for the purpose of 12 13 maintaining minimum flow, level, or guality of water, so as to reallocate such reservation or portion thereof to an 14 applicant who is a qualified reservant under this section. 15 16 Reallocation of reserved water may be made by the board 17 following notice and hearing wherein the board finds that all or part of the reservation is not required for its 18 purpose and that the need for the reallocation has been 19 shown by the applicant to outweigh the need shown by the 20 21 original reservant. Reallocation of reserved water shall not 22 adversely affect the priority date of the reservation, and 23 the reservation shall retain its priority date despite reallocation to a different entity for a different use. The 24 25 board may not reallocate water reserved under this section

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 years.

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4 authority to alter a water right that is not a reservation.

5 (13) The department shall undertake a program to 6 educate the public, other state agencies, and political 7 subdivisions of the state as to the benefits of the 8 reservation process and the procedures to be followed to 9 secure the reservation of water. The department shall 10 provide technical assistance to other state agencies and political subdivisions in applying for reservations under 11 12 this section.

13 (14) Water reserved under this section is not subject
14 to the state water leasing program established under
15 85-2-141."

16 <u>NEW SECTION.</u> Section 2. Extension of authority. Any 17 existing authority of the board of natural resources and 18 conservation to make rules on the subject of the provisions 19 of this act is extended to the provisions of this act.

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50th Legislature

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LC 0490/01

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of the department's cost of preparing an environmental

-2- THIRD READING HB-Y08

impact statement shall be paid by the applicant unless
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4 (4) (a) The board may not adopt an order reserving 5 water unless the applicant establishes to the satisfaction 6 of the board:

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16 (5) If the purpose of the reservation requires 17 construction of a storage or diversion facility, the 18 applicant shall establish to the satisfaction of the board 19 that there will be progress toward completion of the 20 facility and accomplishment of the purpose with reasonable 21 diligence in accordance with an established plan.

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

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HB 0408/02

HOUSE BILL NO. 408	1	. (b)(ii) the Kootenai River and its tributaries to its
INTRODUCED BY IVERSON, GALT, MARKS, ECK	2	confluence with Kootenay Lake in British Columbia;
BY REQUEST OF THE WATER POLICY COMMITTEE	3	<pre>fc;(iii) the St. Mary River and its tributaries to its</pre>
	4	confluence with the Oldman River in Alberta;
A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT WATER	5	(d)(iv) the Little Missouri River and its tributaries
MAY BE RESERVED FOR EXISTING OR FUTURE BENEFICIAL USES ONLY	6	to its confluence with Lake Sakakawea in North Dakota;
IN THE BASIN WHERE IT IS RESERVED UNLESS WATER PROPOSED FOR	7	<pre>fef(v) the Missouri River and its tributaries to its</pre>
A BENEFICIAL USE OUTSIDE THE BASIN WHERE THE DIVERSION	8	confluence with the Yellowstone River in North Dakota; and
OCCURS IS NOT REASONABLY AVAILABLE UNDER THE WATER LEASING	9	<pre>ff)(vi) the Yellowstone River and its tributaries to</pre>
PROGRAM; AND AMENDING SECTION 85-2-316, MCA."	10	its confluence with the Missouri River in North Dakota.
	11	(b) A water reservation may be made for an existing or
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	12	future beneficial use outside the basin where the diversion
Section 1. Section 85-2-316, MCA, is amended to read:	13	occurs only if stored water is not reasonably available for
"85-2-316. Reservation of waters. (1) The state or any	14	water leasing under 85-2-141 and the proposed use would
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year or at such periods or for such length of time as the	19	decide whether to reserve the water for the applicant. The
board designates.	20	department's costs of giving notice, holding the hearing,
(2) (a) Water may be reserved only for existing or	21	conducting investigations, and making records incurred in
future beneficial uses in the following-riverbasins basin	22	acting upon the application to reserve water, except the
where it is reserved, as described by the following basins:	23	cost of salaries of the department's personnel, shall be
fa<u>}(i)</u> the Clark Fork River and its tributaries to its	24	paid by the applicant. In addition, a reasonable proportion
confluence with Lake Pend Oreille in Idaho;	25	of the department's cost of preparing an environmental



HB 408

REFERENCE BILL

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HB 0408/02

impact statement shall be paid by the applicant unless
 waived by the department upon a showing of good cause by the
 applicant.

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

(i) the purpose of the reservation;

8 (ii) the need for the reservation;

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9 (iii) the amount of water necessary for the purpose of10 the reservation;

(iv) that the reservation is in the public interest.

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19 (ii) the proposed out-of-state use of water is not
20 otherwise detrimental to the public welfare of the citizens
21 of Montana.

(c) In determining whether the applicant has proved by
clear and convincing evidence that the requirements of
subsections (4)(b)(i) and (4)(b)(ii) are met, the board
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3 (7) After the adoption of an order reserving waters, 4 the department may reject an application and refuse a permit 5 for the appropriation of reserved waters or may, with the 6 approval of the board, issue the permit subject to such 7 terms and conditions it considers necessary for the 8 protection of the objectives of the reservation.

9 (B) Any person desiring to use water reserved to a 10 conservation district for agricultural purposes shall make 11 application for such use with the district, and the district 12 upon approval of the application must inform the department 13 of the approved use. The department shall maintain records of all uses of water reserved to conservation districts and 14 15 be responsible, when requested by the districts, for rendering technical and administrative assistance within the 16 17 department's staffing and budgeting limitations in the preparation and processing of such applications for the 18 19 conservation districts. The department shall, within its 20 staffing and budgeting limitations, complete any feasibility 21 study requested by the districts within 12 months of the 22 time the request was made. The board shall extend the time 23 allowed to develop a plan identifying projects for utilizing 24 a district's reservation so long as the conservation 25 district makes a good faith effort, within its staffing and

1 budget limitations, to develop a plan.

2 (9) A reservation under this section shall date from
3 the date the order reserving the water is adopted by the
4 board and shall not adversely affect any rights in existence
5 at that time.

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

(11) The board may modify an existing or future order 11 12 originally adopted to reserve water for the purpose of 13 maintaining minimum flow, level, or quality of water, so as 14 to reallocate such reservation or portion thereof to an applicant who is a qualified reservant under this section. 15 Reallocation of reserved water may be made by the board 16 17 following notice and hearing wherein the board finds that all or part of the reservation is not required for its 18 purpose and that the need for the reallocation has been 19 shown by the applicant to outweigh the need shown by the 20 21 original reservant. Reallocation of reserved water shall not adversely affect the priority date of the reservation, and 22 the reservation shall retain its priority date despite 23 reallocation to a different entity for a different use. The 24 board may not reallocate water reserved under this section 25

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on any stream or river more frequently than once every 5
 years,

(12) Nothing in this section vests the board with the 3 authority to alter a water right that is not a reservation. 4 (13) The department shall undertake a program to 5 educate the public, other state agencies, and political 6 subdivisions of the state as to the benefits of the 7 8 reservation process and the procedures to be followed to 9 secure the reservation of water. The department shall provide technical assistance to other state agencies and 10 political subdivisions in applying for reservations under 11 12 this section.

13 (14) Water reserved under this section is not subject
14 to the state water leasing program established under
15 85~2-141."

16 <u>NEW SECTION.</u> Section 2. Extension of authority. Any 17 existing authority of the board of natural resources and 18 conservation to make rules on the subject of the provisions 19 of this act is extended to the provisions of this act.

-End-

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