

IN THE HOUSE

MARCH 17, 1987

RECEIVED FROM SENATE.

SENT TO ENROLLING.

1 House BILL NO. 408
 2 INTRODUCED BY Juleson
 3 BY REQUEST OF THE WATER POLICY COMMITTEE

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT WATER
 6 MAY BE RESERVED FOR EXISTING OR FUTURE BENEFICIAL USES ONLY
 7 IN THE BASIN WHERE IT IS RESERVED UNLESS WATER PROPOSED FOR
 8 A BENEFICIAL USE OUTSIDE THE BASIN WHERE THE DIVERSION
 9 OCCURS IS NOT REASONABLY AVAILABLE UNDER THE WATER LEASING
 10 PROGRAM; AND AMENDING SECTION 85-2-316, 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
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 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
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21 (2) (a) Water may be reserved only for existing or
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 23 where it is reserved, as described by the following basins:

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 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
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 18 After the hearing provided in 85-2-309, the board shall
 19 decide whether to reserve the water for the applicant. The
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INTRODUCED BILL
 HB-408

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4 (4) (a) The board may not adopt an order reserving
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7 (i) the purpose of the reservation;

8 (ii) the need for the reservation;

9 (iii) the amount of water necessary for the purpose of
10 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

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.

22 (c) In determining whether the applicant has proved by
23 clear and convincing evidence that the requirements of
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25 shall consider the following factors:

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6 (10) The board shall, periodically but at least once
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16 NEW SECTION. Section 2. Extension of authority. Any
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APPROVED BY COMM. ON
NATURAL RESOURCES

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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.

22 (6) The board shall limit any reservations after May
 23 9, 1979, for maintenance of minimum flow, level, or quality
 24 of water that it awards at any point on a stream or river to
 25 a maximum of 50% of the average annual flow of record on

1 gauged streams. Ungauged streams can be allocated at the
2 discretion of the board.

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
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
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
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 (11) The board may modify an existing or future order
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
15 applicant who is a qualified reservant under this section.
16 Reallocation of reserved water may be made by the board
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
20 shown by the applicant to outweigh the need shown by the
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
24 reallocation to a different entity for a different use. The
25 board may not reallocate water reserved under this section

1 on any stream or river more frequently than once every 5
2 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
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
11 political subdivisions in applying for reservations under
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 NEW SECTION. 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-