

SENATE BILL 265

Introduced by Bengtson, et al.

1/27	Introduced
1/27	Referred to Agriculture, Livestock & Irrig.
2/13	Hearing
2/16	Committee Report--Bill Passed
2/18	2nd Read Do Pass Motion Failed
2/18	Motion Failed To Indefinitely Postpone
2/20	2nd Reading Passed
2/21	3rd Reading Failed

1
2 INTRODUCED BY *Senate* BILL NO. *265*
Bengtson *Jill Mack* *Stonely*
Abraham
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING THE BOARD OF
5 NATURAL RESOURCES AND CONSERVATION TO REALLOCATE ANY WATER
6 RESERVATION IF IT FINDS THAT THE RESERVATION IS NOT REQUIRED
7 FOR THE PURPOSE IT WAS RESERVED FOR, AND THE NEED FOR THE
8 REALLOCATION IS SHOWN TO OUTWEIGH THE NEED SHOWN BY THE
9 RESERVANT; AMENDING SECTION 85-2-316, MCA; AND PROVIDING AN
10 IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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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 any length of time as
20 the board designates.

21 (2) (a) Water may be reserved for existing or future
22 beneficial uses in the basin where it is reserved, as
23 described by the following basins:

24 (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 (iv) the Little Missouri River and its tributaries to
6 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 (vi) the Yellowstone River and its tributaries to its
10 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
19 decide whether to reserve the water for the applicant. The
20 department's costs of giving notice, holding the hearing,
21 conducting investigations, and making records incurred in
22 acting upon the application to reserve water, except the
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

1 impact statement shall be paid by the applicant unless
2 waived by the department upon a showing of good cause by the
3 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 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
24 subsections (4)(b)(i) and (4)(b)(ii) are met, the board
25 shall consider the following factors:

1 (i) whether there are present or projected water
2 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
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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,
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8 protection of the objectives of the reservation.

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10 conservation district for agricultural purposes shall make
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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~~ may not adversely affect any rights in
5 existence at that time.

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

12 ~~{11}(b)~~ The board may modify ~~an-existing-or-future~~
13 ~~order-originally-adopted-to-reserve-water-for-the-purpose-of~~
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16 reservation or---portion---thereof is reallocated to an
17 applicant who is a qualified reservant under this section.
18 ~~Reallocation--of--reserved--water--may--be-made-by-the-board~~
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20 after notice and hearing, that all or part of the
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22 reserved for and that the need for the reallocation has been
23 shown by the applicant to outweigh the need shown by the
24 ~~original~~ reservant.

25 (c) Reallocation of reserved water ~~shall~~ may not

1 adversely affect the priority date of the reservation, and
 2 the reservation shall retain its priority date despite
 3 reallocation to a different entity for a different use.

4 (d) The board may not reallocate water reserved under
 5 this section on any stream or river more frequently than
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 8 the authority to alter a water right that is not a
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21 NEW SECTION. Section 2. Applicability. [This act]
 22 applies to all reservations being reviewed by the board of
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 24 of this act] and to all other reservations currently
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1 NEW SECTION. Section 3. Extension of authority. Any
 2 existing authority to make rules on the subject of the
 3 provisions of [this act] is extended to the provisions of
 4 [this act].

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APPROVED BY COMMITTEE
ON AGRICULTURE LIVESTOCK
& IRRIGATION

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2 INTRODUCED BY *Bangston, J. Mark, Storer,*
3 *Johnson*

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