

MONTANA WATER USE ACT RESERVATION OF WATERS

In 1978, to ensure an adequate supply of water for future agricultural and other uses, the Montana Board of Natural Resources and Conservation granted water reservations in the Yellowstone River basin to conservation districts and other government entities. Since that time, water reservations have also been granted to conservation districts in the Lower Missouri River basin, the Little Missouri River basin, and a portion of the Upper Missouri River basin. See Appendix F for a listing of the districts in each of these basins that have been granted reservations that are available for water users.

Montana's water reservation law provides an opportunity to legally allocate water for future consumptive uses as well as to maintain instream flows to protect water rights, aquatic life, and water quality. A basin-wide system of water reservations is felt to be a strong basis for protecting Montana's interests relative to those of downstream states.

The conservation districts water reservations are for agricultural irrigation and in some districts for stock watering. Districts rely on land users within the basin to develop the water resource and put the reserved water to use. Districts should encourage land users and resource managers to apply to them for reserved water for new or supplemental irrigation projects.

RESERVATION OF WATERS

References

- Montana Water Use Act--Reservation of Waters (Section 85-2-316, MCA)
- Board of Natural Resources and Conservation Order
- Conservation District General Water Reservation Plan
- Water Reservation Rules (ARM 36.16.101 through 118)

Purpose

When the Montana Water Use Act was passed in 1973, the option to reserve water became a major component of the water law. It was recognized that Montana must be responsive to the need for establishing options for future diversionary uses of Montana's water resources and for maintaining instream flows for the protection of existing water rights, aquatic life, and water quality. The water reservation process is a means whereby this policy can be implemented. The law provides for the establishment of reservations of water by public entities for the beneficial uses that are necessary and shown to be in the public interest. Conservation district reserved water is available for irrigation, and in some districts stock water uses, in the following river basins: Little

Missouri River, Lower Missouri River and tributaries, portions of the Upper Missouri River and tributaries, and Yellowstone River and tributaries.

Does a Reservation Constitute a Water Right?

A reservation is subject to protection under the Montana Water Use Act and is an appropriative water right protected by law. In the case of the conservation districts, the right is held by the district on behalf of the individual users. Individuals will then apply to the district when they have plans to put water to use. A water user receives an authorization or permit in their name from the district for the right to use a portion of the water. This authorization is a legal document granting him authorization to use a portion of the district's reserved water. Legally, this is the same as when an individual obtains a permit from the Department of Natural Resources & Conservation (DNRC) to use water.

According to Montana state law, Board of Natural Resources & Conservation order, and district policy, the reserved water use authorization cannot be arbitrarily taken away from a water user. The water user is protected from losing their right to use water as is a water user holding a permitted water right. Both the district and the water user must adhere to certain rules regarding the water reservation. These rules are based on state statutes, board rules, and district administrative procedures.

What is the Priority Date of a Reservation?

Each water reservation has a priority date as established by the Montana Board of Natural Resources and Conservation (BNRC).

Yellowstone River Basin:

The first board order to establish water reservations on any river in Montana was issued in December of 1978 for the Yellowstone River basin. The order reserved water for municipal use, irrigation, offstream storage, and instream flow. In this basin, qualified individual users can make use of a portion of the conservation districts' reserved water and take advantage of the December 15, 1978, priority date. Municipal uses were given priority over all other reserved water uses. Reservations of water for instream flows were given priority over the conservation districts' reservations above the mouth of the Bighorn River. For the conservation districts below the mouth of the Bighorn River, including the watershed of the Bighorn River, the districts' water reservations were given priority over the instream flow reservations.

Upper and Lower Missouri Basin and Little Missouri Basin:

In 1985 the Montana Legislature directed the Department of Natural Resources and Conservation to initiate a proceeding to reserve water in the Missouri and

Little Missouri river basins. Due to the vast size of these basins, the proceeding was split into the upper and the lower Missouri River basin, with Fort Peck Dam the dividing point. Water reservants in the Missouri River basin have a July 1, 1985 priority date. The upper Missouri River basin conservation district water reservations are junior in priority to instream flow reservations. In the lower and Little Missouri Basins, district reservations have priority over instream flows.

Who Can Apply To The Conservation District To Use Reserved Water?

Any entity can apply to the conservation district to use reserved water.

What Information is Required on the Conservation District Application for Reserved Water Use?

The reserved water use application requires the applicant provide the following information for the proposed irrigation development: legal land descriptions of point of diversion and place of use, source of water, number of acres to be irrigated, flow and volume of water to be use, design information and the period of water use. A detailed map of the project must also be included.

What is the Advantage of a Reservation?

A reservation, once granted, sets aside water for a particular use. Eligible projects can appropriate the water long after the reservation has been granted and still take advantage of the early priority date.

What is the Responsibility of the Conservation District if Granted a Water Reservation?

A reservant must show diligence in putting the reserved flows to use. So far in Montana, reservations have been granted in the Yellowstone River, Missouri River, and Little Missouri River basins. The Yellowstone River basin conservation districts have been administering their reservations since 1979. In this basin, the conservation districts receive applications for reserved water use for specific irrigation projects or other approved uses. The district coordinates with the department in inspecting the project site and preparing a detailed development plan. The district has the option to approve, approve with modifications, or deny the application. If approved, the detailed development plan is sent to DNRC for approval. The district also is responsible for maintaining records of the individual projects that are approved and preparing annual and periodic reports.

In the Missouri River and Little Missouri River basin the DNRC also assists the will be working with the districts beginning in 1995. DNRC will assist the districts with administration of the water reservations. Administration is similar to that in the Yellowstone River Basin.

What is the Difference Between the Reservation Process and the System of Appropriating Water by Means of a Provisional Permit?

Provisional water use permits are awarded to individuals as well as public entities. Water appropriated under a provisional permit must be put to beneficial use shortly after the permit is granted (1 to 2 years). Reserved water is set aside for future use and may be put to use at any time after it is reserved. The priority date of a provisional water use permit is the date the application was received by the department, while in the Yellowstone River basin the reserved water priority date is December 15, 1978 and in the Missouri and Little Missouri basin reservations have a July 1, 1985, priority date.

Who Should Be Contacted for More Information?

For information on the Yellowstone River, Missouri River, and Little Missouri River basin, contact:

Conservation and Resource Development Division
Department of Natural Resources and Conservation
1520 East Sixth Avenue
Helena, Montana 59620-2301
(406)444-6667/444-6668 Helena
(406)232-6359 Miles City

For information on other basins, contact the Water Resources Division, DNRC at (406)444-6601 in Helena.

CONSERVATION DISTRICT WATER RESERVATION BASINS

Yellowstone River Basin:

Big Horn CD

Carbon CD

Custer County CD

Dawson County CD

Little Beaver CD

Park CD

Powder River CD

Prairie County CD

Richland County CD

Rosebud CD

Stillwater CD

Sweet Grass County CD

Treasure County CD

Yellowstone CD

Upper Missouri River Basin:

Chouteau County CD

Fergus County CD

Glacier County CD

Judith Basin CD

Liberty County CD

Lower Musselshell CD

Pondera County CD

Toole County CD

Valley County CD

Big Sandy CD

Lower Missouri River Basin:

Blaine County CD

Richland County CD

Daniels County CD

Liberty County CD

Big Sandy CD

McCone CD

Roosevelt County CD

Sheridan County CD

Valley County CD

Little Missouri River Basin:

Carter County CD

Little Beaver CD

Wibaux CD