

Application of City of Fort Benton  
Water Reservation No. 71889-41Q

II. FINDINGS OF FACT

A. FINDINGS ON THE QUALIFICATION OF THE CITY OF FORT BENTON TO RESERVE WATER (Mont. Code Ann. § 85-2-316(1)(1991); ARM 36.16.107B(1)(a).)

1. The City of Fort Benton is an incorporated municipality and a subdivision of the State of Montana. (Bd. Exh. 12-A, p. 1; § 85-2-316(1), ARM 36.16.107B(1)(a).)

2. The City of Fort Benton has applied for a water reservation of 89 acre-feet/year (af/yr) of water with a maximum diversion rate of .76 cubic feet/second (cfs) to be diverted from the Missouri River for year round use. (Bd. Exh. 12-A, pp. 3-5.) In addition, the City has applied for .67 cfs (up to 35 af/yr) for irrigating new parks between April 1 and October 1 of each year. (Bd. Exh. 12-C, p. 3.)

3. The City of Fort Benton requested a water reservation to meet future demands by municipal and industrial users. (Bd. Exh. 12-A, p. 3.)

B. FINDINGS ON THE PURPOSE OF THE WATER RESERVATION APPLIED FOR BY THE CITY OF FORT BENTON (Mont. Code Ann. § 85-2-316(4)(a)(1991); ARM 36.16.107B(1)(b).)

4. The City of Fort Benton seeks to provide municipal water for future growth in a cost-effective manner. Sound planning requires providing users with an adequate water supply. The term of the water reservation is to year 2025. (Bd. Exh. 12-A, p. 30.)

5. The purpose of the reservation is to provide the water for municipal and industrial uses. (Bd. Exh. 12-A, p. 3.) Municipal and industrial uses are beneficial uses of water in Montana. (Mont. Code Ann. § 85-2-102(2)(a), ARM 36.16.102(3); ARM 36.16.107B(1)(b).)

C. FINDINGS ON THE NEED FOR THE WATER RESERVATION APPLIED FOR BY THE CITY OF FORT BENTON (Mont. Code Ann. § 85-2-316(4)(a)(ii)(1991); ARM 36.16.107B(2).)

6. The Missouri River presently provides a reliable water supply averaging 1.05 cfs to the City of Fort Benton. (Bd. Exh. 12-A, p. 17.) The reservation water requested would be delivered from the recently developed Raney Well system in the Missouri River. (Bd. Exh. 12-A, p. 5.) Water for new city parks would be delivered through the existing municipal water system from the Missouri River (Bd. Exh. 12-A, p. 3.)

7. A reservation is the only means to obtain an early priority date for water that will be needed to meet projected municipal and industrial growth. In the future, water may be appropriated by competing agricultural, industrial, and instream users. (Bd. Exh. 40, p. 249; Bd. Exh. 12-A, pp. 6-7.)

8. It is important that the City of Fort Benton have a water reservation to meet future municipal and industrial water demands in order for the community to prosper and develop. (Bd. Exh. 12-A, p. 32.)

9. Competing water uses may prevent the City of Fort Benton from obtaining or perfecting a water use permit in the future. Without a reservation, the City of Fort Benton may have to go through a costly process of buying or condemning existing water rights to meet increasing demands. (Bd. Exh. 40, p. 249.)

D. FINDINGS ON THE AMOUNT OF WATER NEEDED FOR THE WATER RESERVATION APPLIED FOR BY THE CITY OF FORT BENTON (Mont. Code Ann. § 85-2-316(4)(a)(iii)(1991); ARM 36.16.107B(3).)

10. The method of determining the amount of water requested for a water reservation by the City of Fort Benton was based on a forecast of its future population to the year 2025 along with the estimated amount of water used per person. (Bd. Exh. 40, p. 35.) The methodology used by the City of Fort Benton projected an average annualized (compounded population growth rate) of approximately .86 percent. (Bd. Exh. 40, p. 246.) The 1990 population of the City of Fort Benton was 1,660. (Bd. Exh. 40, p. 236.) The City of Fort Benton's population forecast for the year 2025 was 2,489 people. (Bd. Exh. 40, p. 236.)

11. The populations recorded in the 1990 census indicate that the City of Fort Benton has lost about 12 percent of its population between 1960 and 1990 (from 1,887 to 1,660 persons at present). (Bd. Exh. 12-C, p. 5-a.)

12. The Board takes notice of the proposed development of the Bureau of Land Management interpretive center to be located in Fort Benton. If this development proceeds, the amount of water needed to service this facility and visitors will increase. The Board takes notice of this fact pursuant to Mont. Code Ann. § 2-4-612(6). This information was not available at time of hearing.

13. The City of Fort Benton experiences high system leakage rates (up to 35 percent). (Bd. Exh. 12-A, p. 23.) However, the city expects to reduce leakage by more than 100 gallons per capita daily by replacing old pipe and repairing taps. (Bd. Exh. 12-A, p. 24; Bd. Exh. 12-C, p. 2.) These improvements are expected to reduce per person daily water use by 26 percent (from 406 gallons to 300 gallons). (Bd. Exh. 12-C, p. 2.) This future

rate would be slightly above the 250 gallons per person daily rates typical of Missouri basin communities. (Bd. Exh. 12-A, p. 22.)

14. The city meters 195 of the 945 connections on the water system. (Bd. Exh. 12-C, p. 3.) The City of Fort Benton has no immediate plans to increase the use of metering (Bd. Exh. 12-C, p. 3) although it eventually intends to meter its system. (Bd. Exh. 12-A, p. 42.) The parkland irrigation efficiencies are reasonable. (Bd. Exh. 12-C, p. 3.)

15. As described above, the water use efficiencies associated with the municipal and industrial uses by the City of Fort Benton are reasonable. (ARM 36.16.107B(3)(b).)

16. No other cost-effective measures, in addition to those listed above, could be taken within the reservation term to increase the use efficiency by the City of Fort Benton and lessen the amount of water required for the purpose of the reservation. (ARM 36.16.107B(3)(b).)

E. FINDINGS THAT THE WATER RESERVATION APPLIED FOR BY THE CITY OF FORT BENTON IS IN THE PUBLIC INTEREST (Mont. Code Ann. § 85-2-316(4)(a)(iv)(1991); ARM 36.16.107B(4).)

17. Benefits of the City of Fort Benton's water reservation were calculated on a willingness-to-pay basis. Fort Benton used a \$1.50/1,000 gallons value. (Bd. Exh. 12-A, p. 38.) Helena municipal users are currently paying \$2.47/1,000 gallons. (Bd. Exh. 40, p. 253.)

18. The additional water provided by the water reservation will cost approximately \$.79/1,000 gallons. (Bd. Exh. 12-A, p. 39.)

19. The direct benefits of the City of Fort Benton's water reservation exceed the direct costs. (ARM 36.16.107B(4)(a).)

20. Indirect benefits of the City of Fort Benton's reservation may include secondary economic benefits to the community and to the state, and expanding both the property and income tax base from increased population. (Bd. Exh. 12-C, p. 40.)

21. Indirect costs of the reservation may include loss of opportunity for other development and increased administrative costs. While not quantified these costs are minor. (Bd. Exh. 12-A, p. 39.)

22. There is no significant adverse environmental impact associated with the use of the City of Fort Benton's water reservation. (Bd. Exh. 12-A, p. 40.) The effects of individual

municipal water reservation depletions on water quality have not been quantified (Board Exhibit 40, pp. 253 - 254), but should be very small. Resulting health risks have not been quantified. No other non-quantifiable benefits or costs were identified. (Bd. Exh. 12- A.)

23. Net benefits of granting the City of Fort Benton's water reservation exceed the net benefits of not granting the water reservation and the project is economically feasible. (ARM 36.16.107B(4)(b); ARM 36.16.102(9).)

24. The City of Fort Benton identified three alternative sources of water for future development: renovation of the water treatment plant, Raney well induced infiltration and an alluvial well field. These alternatives would not provide greater net benefits than the water reservation, (Bd. Exh. 12-A, pp. 32 and 33) and are not reasonable. (ARM 36.16.107B(4)(c).)

25. Failure to reserve water for future municipal and industrial use by the City of Fort Benton is likely to result in an irretrievable loss of a resource development opportunity. (Bd. Exh. 12-A, p. 41; ARM 36.16.107B(4)(d).)

26. As conditioned, the City of Fort Benton's water reservation will have no significant adverse impact to public health, welfare, or safety. (ARM 36.16.107B(4)(e).)

F. OTHER FINDINGS RELATING TO BOARD DECISION (Mont. Code Ann. § 85-2-316(3)(B), (4)(a)(iv)(b), (5), (6), and (9)(e)(1991); ARM 36.16.107B(5) through (8).)

27. The water reservation by the City of Fort Benton will be used wholly within the state and within the Missouri River basin. (Bd. Exh. 12-A, p. 14; ARM 36.16.107B(5) and (6).)

28. The City of Fort Benton has identified a management plan for the design, development, and administration of its water reservation. (Bd. Exh. 12-A, p. 43.)

29. The City of Fort Benton is capable of exercising reasonable diligence towards feasibly financing the project and applying reservation water to beneficial use in accordance with the management plan. (ARM 36.16.107B(7).)

30. The priority date of the City of Fort Benton's water reservation is July 1, 1985. (Mont. Code Ann. § 85-2-331(4).)

31. As conditioned, the City of Fort Benton's water reservation will not adversely affect any senior water rights. (ARM 36.16.107B(8).)

32. The public interest in protecting domestic and stockwater rights with a priority date on or after July 1, 1985 and perfected prior to the final date of this Order outweighs the values protected by the municipal reservations.

### III. CONCLUSIONS OF LAW

1. City of Fort Benton is a qualified applicant for a water reservation. (Mont. Code Ann. § 85-2-316(1)(1991).)

2. The purpose of the City of Fort Benton's application is for beneficial use. (Mont. Code Ann. § 85-2-316(4)(a)(i)(1991); ARM 36.16.107B(1)(b).)

3. The need for the City of Fort Benton has been established. Specifically, the City has established that there is a reasonable likelihood that future in-state competing water uses would consume the water available for the purpose of its reservation. (Mont. Code Ann. § 85-2-316(4)(a)(ii)(1991); ARM 36.16.107B(2).)

4. The methodologies and assumptions used by the City of Fort Benton are suitable and accurate under present conditions. (ARM 36.16.107B(3)(a).) As modified, the City of Fort Benton has established the amount of water needed to fulfill its reservation. (Mont. Code Ann. § 85-2-316(4)(a)(iii)(1991); ARM 36.16.107B(3).)

5. Based on a weighing and balancing of the evidence, the reservation by the City of Fort Benton as modified herein is in the public interest. (Mont. Code Ann. § 85-2-316(4)(a)(iv); ARM 36.16.107B(4).)

6. Upper Missouri River water reservations approved by the Board shall have a priority date of July 1, 1985. (Mont. Code Ann. § 85-2-331(4).) The Board may determine the relative priorities of all reservations. (Mont. Code Ann. § 85-2-316(a)(e).)

7. The Board may grant, deny, modify, or condition any reservation applied for. In no case may the Board make a reservation for more than the amount applied for. (Mont. Code Ann. § 85-2-316.)

8. The Board has no authority under the reservation statutes or any other statutes to determine, or alter any water right that is not a reservation. (Mont. Code Ann. § 85-2-316(14).)

IV. ORDER

1. Subject to all applicable modifications, conditions, and limitations (including but not limited to the conditions applied to consumptive use reservations in Exhibits A and B attached to this Order) the application of the City of Fort Benton is granted for the following amount and flow of water: 89 af/year with a maximum diversion rate of .76 cfs for year round use and .67 cfs up to 35 af/year for use between April 1 and October 1.

2. The point of diversion and place of use are from the well set forth in the reservation application City of Fort Benton and by reference are made a part of this Order.

3. The reservation is adopted subject to being perfected by December 31, 2025.

4. Relative to other reservations the priority date of the reservation shall be ahead of any other non-municipal reservation granted with a priority date of July 1, 1985. The reservation shall have equal priority with all other reservations granted to all municipalities.

5. Any and all liability arising from the reservation or the use of the reservation is the sole responsibility of the applicant. By granting such reservations, the Board on behalf of itself and the Department of Natural Resources and Conservation assumes no liability.

Specific reservation conditions (for this reservation)

- A. This amount of 89 af/year with a maximum diversion rate of .76 cfs for year round use is conditioned on the development of the Bureau of Land Management interpretive center and related increased water demands.