

MINUTES

**MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Chairman Bianchi, on January 6, 1993, at
1:05pm

ROLL CALL

Members Present:

Sen. Don Bianchi, Chair (D)
Sen. Cecil Weeding, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Bob Hockett (D)
Sen. Tom Keating (R)
Sen. Ed Kennedy (D)
Sen. Bernie Swift (R)
Sen. Chuck Swysgood (R)
Sen. Henry McClernan (D)
Sen. Larry Tveit (R)
Sen. Jeff Weldon (D)

Members Excused: Sen. Grosfield

Members Absent: None.

Staff Present: Paul Sihler, Environmental Quality Council
Leanne Kurtz, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: None
Executive Action: None

Announcements/Discussion:

Chair Bianchi informed the Committee of the agenda, including staff and committee member introductions, and a presentation on water law and water rights. He noted that Karen Barclay at the Department of Natural Resources and Conservation (DNRC) had estimated that there have been draft requests on as many as 30 water bills.

The staff and committee members introduced themselves to the Committee, providing brief background information.

Chair Bianchi opened the discussion on how the Committee wanted to handle proxy votes, suggesting that when the Committee took executive action, any members who knew they would be gone could submit a proxy vote form. The senators discussed the form and rejected it, preferring instead a written vote which states: "I, Senator _____ do hereby submit my vote to Chairman Bianchi as follows:"

Chair Bianchi stated the secretary would note the roll rather than calling roll.

Chair Bianchi stressed the importance of having people who are testifying sign the register. He also noted that several companies have expressed interest in presenting "what they call the facts on hazardous waste burning in Montana."

Chair Bianchi introduced Mary Ellen Wolfe, coordinator of Montana Watercourse, an Adult and Youth Water Education Program, based at Montana State University. Ms. Wolfe provided the Committee with a folder containing Montana Watercourse informational handouts. (exhibit #1)

Ms. Wolfe described the purpose of Montana Watercourse and how the program is funded. She noted that the program deals primarily with water appropriation, not water quality, and provided an overview of water rights history and use. Ms. Wolfe listed the major water uses and consumers in Montana and the amounts of withdrawal and use. She stated that the water rights system is necessary "to provide for the orderly division of waters during times of scarce supply," and to prove how water is used in the state.

Ms. Wolfe explained provisions of the 1973 Montana Water Use Act and introduced Judge Bruce Loble, Chief Water Judge, Montana Water Court.

Judge Loble discussed the mission and structure of the Montana Water Court noting that the Court must adjudicate about 215,000 water rights that have been filed. Loble detailed the water adjudication process, including how decrees are issued.

Jim Beck of the Helena Regional Office, DNRC, addressed new appropriations and discussed the water permit process, including exemptions. Mr. Beck explained the functions of the DNRC regional offices and provided the committee with a water rights handout. (exhibit #2)

Larry Dolan, DNRC Water Reservation Coordinator discussed the purpose of water reservations, which he noted exist for future use and are administered by the state. Mr. Dolan stated that water reservations "are the only way in Montana now to obtain a water right for instream flows." He discusses the definition of priority date and instream flow.

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Faye Bergen, DNRC, discussed water rights created under federal law. She stated that Federal Reserved Water Rights come from a doctrine created to ensure that Indian and public lands set aside by the government "have enough water rights attached to them to accomplish the purposes of the reservation." Ms. Bergen explained the differences between Federal Reserved Water Rights and state-created water rights. She also discussed the mission of the Reserved Water Rights Compact Commission.

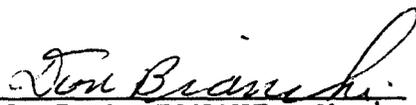
Robin Harper, Assistant Administrator, DNRC Water Resources Division, provided an overview of water management programs. He furnished the committee with a handout (exhibit 3) showing the structure of the DNRC Water Resources Division.

Larry Peterman, Administrator, DNRC Fisheries Division, stated that his division's interest in water programs is aimed at "providing and maintaining quality fish habitat." He discussed programs in which the Fisheries Division has been involved.

Dan Fraser, Chief, Department of Health and Environmental Sciences Water Quality Bureau provided the committee with a handout (exhibit 4) including the Bureau's organizational outline, mission statement, and an overview of the Bureau's programs.

ADJOURNMENT

Adjournment: 2:55pm



SEN. DON BIANCHI, Chair



LEANNE KURTZ, Secretary

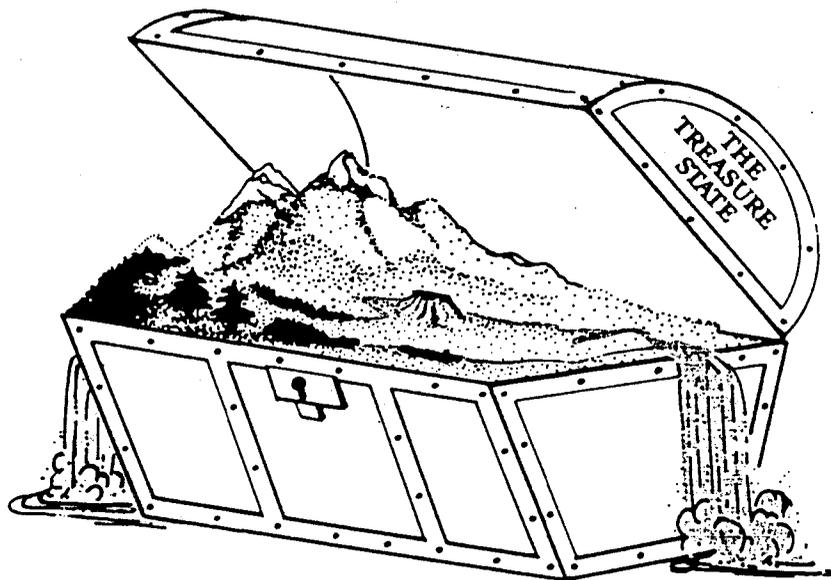
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MONTANA

UNIVERSITY SYSTEM

WATER RESOURCES CENTER



The original is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

SENATE NATURAL RESOURCES
EXHIBIT NO. 1
DATE 1/6/93
BILL NO. _____

A Quick Course in
Water Rights & Water Management
53rd Montana Legislature
January 1993

WATER RIGHTS

		PERMIT (600)
		All Surface Water Groundwater More Than 35 GPM or 10 A/F
NEW RIGHT		CERTIFICATE (NOC -- 602)
AFTER JUNE 30, 1973		Groundwater less than 35 GPM, not to exceed 10 A/F per year
		STOCKWATER PIT/RESERVOIR (605)
		Nonpreennial Stream Reservoir less than 15 A/F 40+ AC Pasture Max., 2 Reservoir Fills Per Year
		CLAIM (SB-76)
		All Pre-July 1, 1973, Rights, Except for Domestic and Stock Uses From GW or <u>Directly</u> from a Stream (Claims had to be filed by April 30, 1982)
EXISTING RIGHT		PRE-1962 (GROUNDWATER)
BEFORE JULY 1, 1973		No Record Required (May Have a Courthouse or Dept. Filing)
		EXEMPT (GROUNDWATER)
		1962 TO 1973 (GROUNDWATER)
	STOCK and DOMESTIC	Requires Courthouse Filing (May Have Dept. Filing)
		STOCK DIRECTLY
		FROM SURFACE WATER

SENATE NATURAL RESOURCES
 EXHIBIT NO. 2
 DATE 1/6/93
 BILL NO. _____

DNRC WATER RESOURCES DIVISION 124.2 FTE

**Water Resources Regional Offices
Nine Regions
58.0 FTE**

Support and Implementation of
Division Programs at Local Level

**Division Administration
4.5 FTE**

- Program Management
- Budget Administration
- Personnel Management
- Interstate Water Allocation
- International Water Allocation
- Legislation
- Congressional Action
- Engineering Coordination
- Clerical Coordination

SENATE NATURAL RESOURCES

EXHIBIT NO. 3

DATE 1/6/95

BILL NO. _____

**State Water Projects Bureau
15.0 FTE**

- State Water Project Management
- State Water Project Rehabilitation
- State Water Project Water Rights
- Broadwater Hydropower Project
- State Water Project Transfer
- State Water Project Hydropower Development

**Water Management Bureau
18.7 FTE**

- State Water Plan
- Missouri River Water Reservations
- Upper Clark Fork Water Plan
- Drought Response
- Milk River Project
- Special Projects
- Hydrosiences Support
- Musselshell Basin Water Plan

**Water Operations Bureau
7.0 FTE**

- Montana Dam Safety Compliance
- Floodplain Management
- National Flood Insurance Program Assistance
- Water Measurement for Chronically Dewatered Waterways
- Board of Water Well Contractors
- Administrative Support
- Water and Monitoring Well Driller Licensing

**Water Rights Bureau
21.0 FTE**

- Water Use Authorizations
- Controlled Groundwater Areas
- Basin Closures
- Central Records
- Claims Examination
- Water Court Assistance

WATER QUALITY BUREAU

MISSION STATEMENT:

***"TO PROTECT,
MAINTAIN AND IMPROVE
THE QUALITY OF
MONTANA WATERS"***

75-6-101, et. seq., MCA
"Montana Law Regarding Public Water Supplies"

75-5-101, et. seq., MCA
"Montana Water Quality Act"

75-5-1101, et. seq., MCA
"Montana Wastewater Treatment Revolving Fund Act"

75-4-101, et. seq., MCA
"Montana Sanitation In Subdivisions Act"

37-42-101, et. seq., MCA
"Water Treatment Plant Operators"

80-15-101, et. seq., MCA
"Montana Agricultural Chemical Ground Water Protection Act"

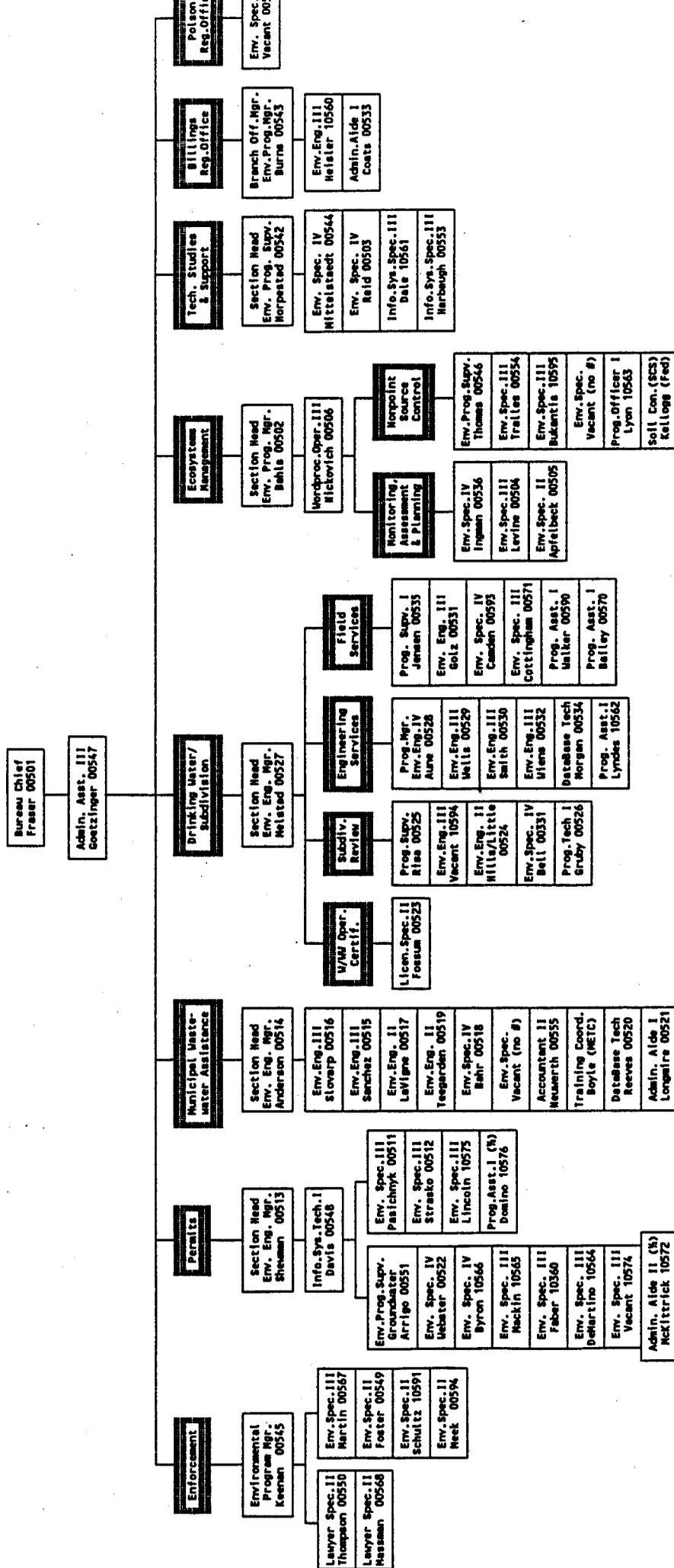
SENATE NATURAL RESOURCES

EXHIBIT NO. 4

DATE 1/6/93

BILL NO. _____

WATER QUALITY BUREAU



Statewide ground water quality standards and a nondegradation requirement are specified in the Montana Ground Water Pollution Control System (MGWPCS) regulations. Program staff provide daily interpretations and recommendations to industry, state and local agencies and the public regarding compliance with these standards and administer a permit program to control sources of ground water pollution. Over 70 MGWPCS permits have been issued to control sources of ground water pollution. Ground water program staff also review projects permitted by other programs and agencies to ensure compliance with state standards.

Program staff investigate about 30 spills or complaints each month. At any one time, ground water staff are tracking clean up and monitoring activities at 75 sites where ground water contamination has occurred or is likely to occur. The ground water program also supports Water Quality Act enforcement activities related to violations of ground water standards.

The WHP program was mandated by the Safe Drinking Water Act to prevent ground water pollution near public water supply wells. The statewide WHP program has been developed to provide a framework to assist local governments. Almost 20 communities or water districts have begun development of local WHP programs to prevent ground water contamination and to protect their drinking water quality.

Ground Water Program staff work jointly with the Department of Agriculture to implement responsibilities required under the Montana Agricultural Chemical Ground Water Protection Act. These duties include development of a state wide pesticide management plan and response to water contamination incidents involving agrichemicals and ground water.

Several sites in Montana have severe ground water contamination over a large area. The Ground Water Program has utilized authority under the Comprehensive Environmental Cleanup and Responsibility Act to require responsible parties to initiate clean up of ground water at these special ground water contamination sites.

Local Water Quality District programs are reviewed by the Ground Water Program and approved by the Board. Several counties in Montana have begun work to create Districts to establish and fund local water quality protection programs.

Authorization: 33 USC § 1251-1376 Clean Water Act as Amended
42 USC § 300 Safe Drinking Water Act as Amended
75-5-101 MCA Montana Water Quality Act
75-6-101 MCA Public Water Supply Law
80-15-101 MCA Montana Agricultural Chemical Ground
Water Protection Act
7-13-4501 MCA Local Water Quality Districts

Goals and Objectives:

1. Implement the Montana Ground Water Pollution Control system to administer statewide ground water quality standards and to control sources of pollution through the MGWPCS permit program. (MT-1)

2. Respond to spills and complaints related to ground water, conduct oversight of cleanup activities, and support Water Quality Act enforcement. (MT-2)
3. Implement a Wellhead Protection Program to protect the quality of ground water utilized by public water supplies. (US-1)
4. Implement an agricultural in ground water protection program to comply with the requirements of the Montana Agricultural Chemical Ground Water Protection Act and to prevent contamination of ground water by agricultural chemicals. (MT-3)
5. Conduct oversight of special ground water pollution projects in accordance with the Comprehensive Environmental Cleanup and Responsibility Act. (MT-2)
6. Implement a Local Water Quality Districts program to assist local governments in ground water pollution prevention. (MT-3)

50055.G&O

CONSTRUCTION GRANTS PROGRAM

Overview The EPA Construction Grants Program was created in 1972 with the passage of the Clean Water Act as a means of providing grant assistance to communities to meet national wastewater treatment standards. Eligible projects include technical studies, wastewater treatment plants, collection systems, and related engineering services. Montana has received over 200 million dollars from the federal government to build wastewater projects, matched by a local investment estimated to be over 100 million. Administration of the grant program is delegated to the MDHES with limited oversight by EPA. The program staff provides technical and administrative review of project documents, assists communities in securing funds and utilizing those funds in a cost-effective manner, and works to insure that the facility built is functional and meets discharge permit requirements. Technical assistance through training, workshops, on-site assistance and facility inspections are included within the scope of this program. This program will be phased out by the later part of the decade and replaced by other financial and technical assistance programs.

Authorization: P.L. 92-500, as amended
 33 U.S.C. 1251-1387
 75-5-101, et.seq., MCA

Goals and objectives:

1. Utilize remaining grant funds for high priority projects (approximately 30 ongoing projects) currently in design or construction. (1 - US)
2. Administratively close out projects where construction has been completed. Assist communities with audit exceptions where needed. (3 - US)
3. Provide advance of allowance grants for small needy communities for the planning and design of wastewater

treatment works. Provide planning and technical assistance to these communities as needed. (2 - US)

4. Provide technical assistance to communities, plant operators, and environmental professionals through onsite and statewide training to insure that plants are being properly operated and maintained. Administer, in cooperation with Northern Montana College, the Montana Environmental Training Center. (1 - US, MT)
5. Inspect and evaluate wastewater systems on a systematic basis to insure compliance with state or federal standards and identify performance limiting factors. Work with the community to address the problems where necessary. (2 - US, MT)

50054

WASTEWATER TREATMENT REVOLVING FUND PROGRAM

Overview The 1987 Amendments to the Clean Water Act created the state revolving loan program as a means of providing a long-term source of financial assistance for water pollution control projects. The 1989 legislature passed enabling state legislation for the program allowing MDHES the administrative framework to establish the new program. The uses of the fund include low interest loans, bond leveraging, refinancing existing debt, credit enhancements and administrative costs. The program is capitalized, at a minimum, over a six year period with federal and state funds. All principal, interest, and investment earnings must revolve back into the fund for future loans. Approximately 40 million dollars in federal funds have been authorized by Congress for initial capitalization of the program which must be matched with a 20% state share which is 8 million dollars. The program will be administered in a manner similar to the construction grants program with eligibility requirements initially the same. As initial federal monies are loaned out and funds revolve back into the program, many of the federal programmatic requirements are dropped.

Authorization: P.L, 92-500, as amended
33 U.S.C. 1251-1387
75-5-1101, et. seq., MCA

Goals and objectives:

1. Manage the state revolving fund program which provides low interest financing (up to 100 percent loans) for municipal wastewater treatment and collection systems. (1 - US, MT)
2. Ensure the technical integrity of SRF projects through the review of planning, design plans and specifications, construction activities and development of a sound operation and maintenance program. (2 - US, MT)
3. Ensure compliance with all pertinent federal, state and local water pollution control laws and regulations. (1 - US, MT)

4. Obtain optimum capitalization of the funds for the state in the shortest reasonable time. (3 - US,MT)
5. Simplify the administrative and regulatory requirements of the program without sacrificing project quality to make the financial assistance readily accessible. (2 - US,MT)

50059.G&O

WATER/WASTEWATER OPERATOR CERTIFICATION PROGRAM

Overview Montana law requires operators in responsible charge of water distribution, water treatment, and wastewater treatment systems which serve ten connections or more to be certified through education, examination, and experience requirements for these three types in five classifications. Certification is granted by the Department of Health and Environmental Sciences through the certification program of the Water Quality Bureau as required by Montana Water and Wastewater Certification Law, Title 37, Chapter 42, MCA and Title 16, Chapter 18, ARM. To meet certification requirements, all operators must have graduated from high school or received a GED certificate; must pass an examination specific to the treatment process or population of the system; and must have operating experience specified with that treatment process or population. Applicable academic education may be substituted for experience up to one-half of any requirement. Certification must be renewed annually by payment of fee and satisfactory operation. Additionally, every even-numbered year continuing education units are required for renewal. Through certification, qualified persons are trained to properly operate systems which assure safe drinking water for Montana citizens and which protect state waters from harmful discharge of wastewater. Currently Montana has 1400 certified operators.

Authorization 37-42-101 - 322, MCA Water Treatment Plant Operators
2-15-2105, MCA Board Authority
37-42-308, MCA Fee Authority

Goals and Objectives

1. To assure competent operators of Montana water/wastewater systems by enforcement of the law requiring certified operators, and administration of an operator certification program and a renewal program with continuing education requirements. (1 - MT)
2. To assure accurate and timely program information is readily available to the department and the public. (2 - MT)
3. To provide a channel for program review, support, and assistance from outside the department through advisory council-department liaison. (3 - MT)
4. To assure consistent and equal application of the law and regulations (3 - MT)

50056.G&O

SUBDIVISION REVIEW PROGRAM

The purpose of this program is to ensure that adequate facilities for water supply, wastewater treatment, solid waste disposal and stormwater drainage will be provided for subdivisions of land less than 20 acres in size. All such facilities are reviewed by the program or contracted counties to see that minimum design standards are complied with, that drinking water is acceptable in terms of quantity and quality, and that wastes are disposed of in a manner which does not endanger public health or the environment.

By requiring the installation of adequate infrastructure facilities, the public and the environment are provided with a basic level of protection. It is human nature to minimize initial construction costs without giving due regard for future consequences. The individual homeowner deserves assurance that the largest investment of his or her lifetime will not be jeopardized by another's negligence.

Authorization 76-4-101 Public policy
76-4-104 Rules for administration and enforcement

Goals and objectives

1. Review subdivision applications submitted directly to DHES for compliance with regulations regarding water supply and wastewater treatment. (1 - MT)
2. Conduct field investigations of proposed and problematic subdivisions to insure compliance with current regulations. (2 - MT)
3. Review subdivision applications submitted directly to DHES for compliance with regulations regarding stormwater treatment and solid waste disposal. (2 - MT)
4. Conduct environmental assessments of subdivision applications as required by the Montana Environmental Policy Act. (3 - US, MT)
5. Examine subdivision applications reviewed and approved by local departments of health under contract with DHES. (3 - MT)

50057.G&O

PUBLIC WATER SUPPLY PROGRAM

Montana has had a public water supply program since 1907 when the first Montana law was passed to address disease outbreaks and deaths associated with public water systems (PWS). Today's program regulates 2140 public water supply systems for contaminants which can have a negative impact on human health. These contaminants include those which may have acute health effects (microbiological pathogens and nitrates), and those which can impact the long-term health (carcinogens and mutagens). Montana's program emphasizes compliance through preventive measures such as operator training, technical assistance and plan review.

Montana has a relatively high rate of non-compliance with state and federal drinking water standards. The non-compliance is primarily due to public water supply systems that do not meet standards for microbiological quality. An average of more than one boil water order per week has been issued during the

past two summers because of the presence of fecal coliform bacteria in public water supplies. Montana also has found a surprising number of water supplies contaminated with man-made chemicals.

Authorization 75-6-101 Policy
75-6-103 Duties of the board
75-6-104 Duties of the department
42 U.S.C. §300f (federal Safe Drinking Water Act)

Goals and Objectives

1. Provide training, technical assistance, sanitary survey and emergency response services through DHES staff to Montana's 2100+ public water supplies to assist in compliance with current state drinking water regulations. (1 - MT)
2. Provide efficient plan review of proposed improvements to public water supplies to enhance water and wastewater infrastructure through compliance with state standards. Also, delegate review where possible to local units of government to streamline review procedures. (1 - US, MT)
3. Provide data management, compliance monitoring, and informal enforcement services to insure compliance with current state regulations. (2 - US, MT)
4. Provide training, technical assistance and sanitary survey services through DHES staff and contracted services to Montana's 2100+ public water supplies to assist in compliance with new federal drinking water regulations not yet adopted in Montana. Also, provide contracted services training, technical assistance and sanitary services for compliance with existing state regulations. (3 - MT)

50058.G&O

WATER QUALITY MANAGEMENT

Overview The purpose of the Water Quality Management Program is to monitor water quality and to prepare plans to protect and restore the integrity of aquatic ecosystems in Montana.

Authorization: 75-5-101 et seq, MCA Montana Water Quality Act
P.L. 92-500 Federal Clean Water Act

Goals and Objectives:

1. Monitor conditions and trends in surface water quality and assess sources and causes of pollution (1 - MT, US).
2. Prepare and review plans at the project and watershed levels to protect high quality waters and to correct existing water quality problems (2 - MT, US).
3. Provide water quality information and other assistance to resource managers and the public to increase awareness of water quality problems and to prevent and control degradation of aquatic ecosystems (3 - MT, US).

NONPOINT SOURCE POLLUTION CONTROL

Overview Ninety percent of the water pollution in Montana comes from nonpoint sources such as agriculture, forestry, resource extraction and hydromodification. Section 319 of the federal Clean Water Act establishes a national program for controlling nonpoint source (NPS) pollution and delegates to the states the authority to implement programs to control NPS pollution through the use of educational activities, financial incentives and other means. The Montana NPS Management program is a coordinated, comprehensive, multi-agency approach to NPS control with DHES/WQB as the lead agency. The purpose of the program is to achieve the control and reduction of NPS pollution through the universal, voluntary application of the best management practices for the pollution sources that substantially impair or threaten beneficial uses of Montana waters. The state will continue to implement its fully approved NPS management program, target additional waterbodies for implementation, set milestones for control measures and expand the program to other pollution sources.

Authorization 75-5-101, et. seq., MCA Montana Water Quality Act
P.L. 100-4 (Section 319) Federal Clean Water Act

Goals and Objectives

1. Reduce the impairment of state waters by nonpoint source pollution by implementing watershed based best management proactive demonstration projects and proactive educational activities. (1 - MT, US)
2. Coordinate NPS program activities with water quality programs administered by other state, federal and local agencies and provide oversight of resource management programs and activities administered by those agencies. (2 - MT, US)
3. Lead the development and implementation of a statewide, interagency wetlands conservation strategy. (2 - MT, US)
4. Monitor and assess nonpoint source impacted waters to ascertain the degree of impairment and the success of control measures implemented. (3 - MT, US)

WATER POLLUTION CONTROL PROGRAM

Overview This program provides for the general protection of water quality in Montana. This includes management of water quality data, reviewing and revising the water quality standards, supporting the bureau's enforcement and compliance efforts, issuing short term authorizations to violate water quality standards, providing 401 certifications, and reviewing major projects, including mines, for compliance with the Montana's water quality standards and nondegradation requirements and, following through on nondegradation appeals for these projects.

Authorization: Montana Water Quality act 75-5-101 MCA
Federal Water Pollution Control Act 33 U.S.C. § 1251-1376

Goals and Objectives

1. To review, and as necessary, revise the water quality standards and

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nondegradation rules (1 - MT & Fed).

2. To review major projected developments to ensure compliance with the Montana Water Quality Laws and to assist the Board of Health and Environmental Sciences in nondegradation appeals (2 -MT).
3. To support the Bureaus enforcement and compliance efforts (2 - MT & FED).
4. To provide accurate and secure storage of water quality data (2 - MT).
5. To provide, short term authorizations to violate water quality standards and "401" certifications (3 - MT & FED).