

**MINUTES**

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

**COMMITTEE ON NATURAL RESOURCES**

**Call to Order:** By Chair Bianchi, on February 5, 1993, at 1:03 p.m.

**ROLL CALL**

**Members Present:**

Sen. Don Bianchi, Chair (D)  
Sen. Bob Hockett, Vice Chair (D)  
Sen. Sue Bartlett (D)  
Sen. Steve Doherty (D)  
Sen. Lorents Grosfield (R)  
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. Cecil Weeding (D)  
Sen. Jeff Weldon (D)

**Members Excused:** None.

**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: SB 172  
Executive Action: SB 225, SB 72

**HEARING ON SB 172**

**Opening Statement by Sponsor:**

Senator Gerry Devlin, SD 13, stated that a conference committee during the 1991 legislature changed the size of wells exempt from permitting provisions in the Montana Water Use Act from 100 gallons per minute (gpm) to 35 gpm. Sen. Devlin said the Department of Natural Resources and Conservation's (DNRC) lengthy permitting process has caused problems for people who need more water. SB 172 would increase the wells exempt from the

permitting process from 35 gpm to 100 gpm.

**Proponents' Testimony:**

Jaqueline Lenmark, Montana Water Well Drillers Association (MWWDA), stated the Association requested SB 172 and asked Sen. Devlin to sponsor the bill. She stated the Association wants the statute restored to what it had been before it was amended during the 1991 session. Ms. Lenmark said the change in the law has hurt development in Montana. She stated 35 gpm is insufficient for agricultural use and for small businesses. Ms. Lenmark added the change in the statute has "increased the bureaucratic layers that citizens of Montana and the well drillers must proceed through before proceeding with their drilling".

Patrick Byrne, Great Falls water well contractor and former president of MWWDA, discussed how the law and the permitting process worked prior to 1991. He said an owner could request a well be drilled to produce 100 gpm and receive a water right from DNRC. Mr. Byrne noted there was protection from overusage in the previous law. He said under current law, combined use from the same source (called manifolding) cannot exceed 35 gpm. Mr. Byrne stressed he does not want to abolish permitting completely, but thinks 35 gpm is too low. He read a letter from a Billings driller describing his experience with the permitting process (Exhibit #1).

Bob Chamberlin, O'Keefe Drilling Company, said DNRC has stated the permitting process takes about 3 to 5 months without objections. He said the process is costly to drillers, their clients and the government, and does not feel it is always necessary to protect the groundwater system. Mr. Chamberlin added state and federal statute adequately protects water resources.

Terry Lindsay, president, MWWDA, read from written testimony (Exhibit #2).

Nancy Griffin, Montana Homebuilders' Association, said SB 172 is a restriction on private property rights and submitted written testimony (Exhibit #3).

The following proponents stated their names and expressed support for SB 172:

Curtis Schelle, American Drilling and Supply, Billings  
Robert Saurer, Saurer's Pump Service, Missoula  
Richard Byrne, Pat Byrne Drilling, Great Falls  
Pat Byrne, Sr., Pat Byrne Drilling, Great Falls  
Rodger Freier, Hi Line Drilling, Havre  
Ralph Eslinger, Eslinger Drilling, Corvallis  
Larry Jennings, Jennings Drilling, Lewistown  
Clarence Petrie, Petrie Drilling, Malta  
Larry Bond, Bond Drilling, Inc., Terry

Steve Hansen, Hansen Environmental Drilling, Glasgow  
Phil Bakke, Camp Well Drilling, Missoula  
Dorlene Bakke, Camp Well Drilling, Missoula  
Randy Matthews, Eslinger Drilling, Corvallis  
Bill Kupfner, Rock Creek Drilling, Joliet  
Ralph Schelle, American Drilling and Supply, Billings  
Andy Eslinger, Eslinger Drilling, Corvallis  
Bill Mills, 2M Company, Billings  
Chester Major, 2M Company, Billings  
Emmet Gendron, Sidney  
Tom Beven, Beven Drilling, Big Timber  
Jerry Brothers, Dynamite Drilling, Butte  
Fred Boyce, Boyce Drilling, Sidney  
Bud and Myrtle Jacobson, Jacobson Drilling, Malta  
Dan O'Keefe, O'Keefe Drilling, Butte  
Clint Nelson, O'Keefe Drilling, Great Falls  
Dick Smith, Mountain Supply, Bozeman, Missoula, Billings  
Jim Nielsen, Nielsen Pump Corporation, Missoula  
Ken Nelson, Lewistown  
Steve Eslinger, Eslinger Drilling, Corvallis  
Dave Ward, Four Star Drilling, Lewistown  
Curtis Carlson, Carlson Drilling, Corvallis  
Vicki Lautt, executive secretary, MWWDA

Sen. Keating pointed out that Nancy Griffin's written testimony (Exhibit #3) recommended SB 172 do not pass. Ms. Griffin corrected the error.

#### Opponents' Testimony:

Holly Franz, water rights attorney representing the Montana Power Company (MPC), discussed the information in her written testimony (Exhibit #4). She stated the permitting process is necessary to protect water rights and allow for objections. Ms. Franz said the purpose of exempting 35 gpm wells in the Montana Water Use Act was to allow homeowners to drill wells for domestic use. Ms. Franz said she is concerned that SB 172 removes the combined appropriation language. She said an individual can avoid the permit process by drilling several 99 gpm wells. She said there should be opportunity to review appropriations and their affect on existing water rights.

Vivian Drake, supervisor of the Lewis and Clark County Water Quality Protection District, read from written testimony (Exhibit #5).

Gary Fritz, DNRC, submitted written testimony (Exhibit #6) and discussed the permitting process, noting the purpose of permitting is to protect water right holders. He said the purpose of the combined appropriation language is to prevent someone from drilling several wells under 35 gpm to escape the permitting process. Mr. Fritz said applications take more time to process when DNRC receives objections. He said DNRC averages

97 days to process applications. Mr. Fritz stated 35 gpm is sufficient for any single family home, and does not understand why the Homebuilders Association would be interested in changing the current law.

Mark Shapley, a hydrogeologist and former DNRC employee, said he was involved with the technical side of application review and groundwater use permits. Mr. Shapley discussed the potential cumulative impacts of large numbers of unpermitted wells. He added DNRC learns about the behavior of different aquifers by examining ground water use permit applications. Mr. Shapley stated the dangers of cumulative impact to aquifers are real and difficult to deal with. He added the problems are made worse by "including more wells and more groundwater development within a classification that has no oversight at all". He said he believes that SB 172 is a step backwards.

**Questions From Committee Members and Responses:**

Sen. Weeding asked Mr. Lindsay if MWWDA members have had trouble with the law since 1991. Mr. Lindsay replied that customers have had problems with the time consuming permitting process. Mr. Lindsay stated an irrigation well may require 100 gpm and drillers have to convince an objector of their right to drill. Sen. Weeding asked why surface water and ground water should be treated differently. Mr. Lindsay acknowledges that surface water is in short supply, but underground water is not touched. He said he does not believe the legislature should shut down development before there is a problem.

Sen. Bianchi asked Mr. Lindsay what the basis is of his statement that Montana's underground aquifers are underused. Mr. Lindsay said information presented at the water well driller's convention indicated that Montana is a water-rich state.

Sen. Doherty asked Mr. Lindsay how many water well drillers operate in Montana. Mr. Lindsay stated there are 162 water well contractors, 177 of which are active water well drillers. Mr. Lindsay added 400 to 450 wells producing 35 to 100 gpm are drilled each year. Sen. Doherty asked Mr. Fritz why ten times as many wells are being drilled as there are permits issued. (Sen. Doherty was referring to Mr. Fritz's testimony that "52 permit applications were received for wells falling within the 35 to 100 gallon per minute size range.") Mr. Fritz stated he did not understand the source of Mr. Lindsay's information. Mr. Fritz stated DNRC has received 52 applications since the current law went into effect, and discussed factors that lengthen the processing time.

Sen. Grosfield said he understands the major issues to be:

- 35 vs. 100 gallons per minute
- manifolding
- bureaucratic delays

Sen. Grosfield asked Pat Byrne if his biggest concern is the bureaucratic delay. Mr. Byrne replied he is most concerned about permitting delays and exempting wells producing from 35 to 100 gpm. Mr. Byrne said he felt the law worked well before it was amended in 1991. Sen. Grosfield asked Mr. Fritz for the definition of "source" on page 5. Mr. Fritz stated there is no statutory definition of "source", but DNRC interprets "source" as being from the same aquifer. Sen. Grosfield wondered if a 5 gpm well from the Madison Aquifer would require a permit if a 34 gpm had already been drilled in the same aquifer somewhere in the state. Mr. Fritz responded that a permit would not be required for the 5 gpm well, stating DNRC is not enforcing the law as Sen. Grosfield suggested. Mr. Fritz stated legislative intent was to prevent manifolding of three 35 gpm wells to avoid the permitting process. Sen. Grosfield and Mr. Fritz discussed manifolding, certificates of water right, provisional permits, and interim permits. Sen. Grosfield asked about the differences in impacts on aquifers in eastern and western Montana. Mr. Fritz said most of the problem areas are in western Montana, in "confined aquifer" situations where there has been significant development.

Sen. Kennedy asked Mr. Fritz if DNRC could cut down the permit time. Mr. Fritz stated DNRC has worked hard at streamlining the permit process, but added there has been increased concern about the impacts of new uses.

Sen. Keating asked Mr. Fritz how many instances there have been of wells drying up because another well was permitted. Mr. Fritz stated it is a common occurrence, but could not estimate how many.

Sen. Bartlett asked why the definition of "groundwater" was changed during the last legislature. Mr. Fritz said he does not know why the definition was changed. Sen. Bartlett asked Ms. Franz if MPC would still be opposed to SB 172 if the definition of groundwater had not changed. Ms. Franz stated MPC is a surface water user, adding she does not agree with Mr. Lindsay that ground water and surface water are independent of each other.

Sen. Weeding and Mr. Lindsay discussed the relation of the well hole's diameter to rate of flow.

Sen. Hockett asked Ms. Franz if MPC objects to all wells as standard procedure, as indicated in literature from the MWWDA. Ms. Franz stated MPC's objection depends on the distance of the well from a water source, and the depth of the well. She added surface water sources in the Missouri River are depleted, forcing more people to resort to wells. Ms. Franz stated MPC does not object to every requested permit. Sen. Hockett asked if there was any spacing requirement for well drilling. Mr. Fritz stated there is not statutory prohibition against drilling wells next to each other.

Sen. Tveit said he believes the well drillers are most concerned about the manifold clause. Mr. Fritz again discussed DNRC's interpretation of the law and legislative intent, noting there may be other ways to interpret the statute.

**Closing by Sponsor:**

Sen. Devlin stated the permitting process takes too long, and urged the Committee to recommend that SB 172 Do Pass.

**EXECUTIVE ACTION ON SB 225**

**Motion/Vote:**

Sen. Weldon MOVED TO AMEND SB 225 (SB022501.PCS). The MOTION CARRIED UNANIMOUSLY.

**Motion/Vote:**

Sen. Grosfield MOVED SB 225 DO PASS AS AMENDED. The MOTION CARRIED UNANIMOUSLY.

**EXECUTIVE ACTION ON SB 72**

**Motion:**

Sen. Tveit MOVED TO AMEND SB 72 (SB007203.PCS).

**Discussion:**

Paul Sihler stated Don McIntyre, DNRC legal counsel, had suggested adding "commitment to a" funding agreement in the language in Section 6 of SB 72. Sen. Tveit stated he is moving the amendments with the addition of the commitment language in Section 6.

Sen. Swysgood stated New Section 3 would allow DNRC to issue a permit for seeding and depositing within Montana borders. He noted there would be no control over seeding inside Montana boundaries, if the rain was intended to fall in Montana. Sen. Bianchi stated opportunities would still exist for public comment and objection. Mr. McIntyre said legislative approval would not be required to receive a permit for seeding and depositing within Montana boundaries, but the rest of the requirements would apply.

**Vote:**

The MOTION to AMEND SB 72 CARRIED UNANIMOUSLY.

**Motion/Vote:**

Sen. Tveit MOVED SB 72 DO PASS AS AMENDED. The MOTION CARRIED UNANIMOUSLY.

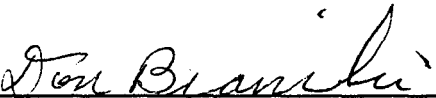
**EXECUTIVE ACTION ON SB 60**

**Motion/Vote:**

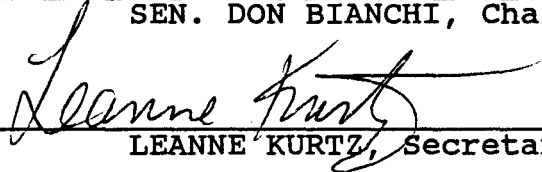
Sen. Grosfield MOVED TO TABLE SB 60. The MOTION to TABLE CARRIED with Sen. Keating voting NO.

**ADJOURNMENT**

**Adjournment:**



SEN. DON BIANCHI, Chair



LEANNE KURTZ, Secretary

DB/lk

# ROLL CALL

SENATE COMMITTEE Natural Resources DATE 2/5/93

NAME	PRESENT	ABSENT	EXCUSED
Bignelli	✓		
Hockett	✓		
Bartlett	✓		
Doherty	✓		
Grosfield	✓		
Keating	✓		
Kennedy	✓		
Swift	✓		
Sussman	✓		
McClellan	✓		
Tveit	✓		
Weeding	✓		
Weldon	✓		



SENATE STANDING COMMITTEE REPORT

Page 1 of 2  
February 5, 1993

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration Senate Bill No. 72 (first reading copy -- white), respectfully report that Senate Bill No. 72 be amended as follows and as so amended do pass.

Signed: *Don Bianchi*  
Senator Don Bianchi, Chair

That such amendments read:

1. Title, line 10.

Following: "PUBLIC GOOD"

Strike: ", "

Insert: "AND"

2. Title, line 10.

Following: "PROCEDURES"

Strike: ", AND A PUBLIC VOTE IN AFFECTED COUNTIES"

Following: ";"

Insert: "PROVIDING FOR LEGISLATIVE APPROVAL OF PERMITS FOR WEATHER MODIFICATION ACTIVITIES IN MONTANA IF THE PRIMARY BENEFIT OF THE ACTIVITY IS OUTSIDE MONTANA;"

3. Title, line 13.

Strike: "AN"

Insert: "A RETROACTIVE"

4. Page 2, lines 18 and 19.

Strike: "-- public vote"

5. Page 4, lines 15 and 16.

Following: "report"

Strike: remainder of line 15 through "met" on line 16

6. Page 4, line 17 through page 5, line 2.

Strike: subsection 4 in its entirety

Renumber: subsequent subsection

7. Page 5, lines 4 and 5.

Following: "(2)" on line 4

Strike: remainder of line 4 through "," on line 5.

8. Page 5, lines 7 through 15.

Strike: section 3 in its entirety

Insert: "NEW SECTION. Section 3. Legislative approval. The board may not issue a permit for a proposed weather modification activity in Montana if the primary benefit of the weather modification activity is outside Montana until the department petitions the next regular session of the legislature and the legislature affirms the decision of the board to grant the permit.

NEW SECTION. Section 4. Codification instruction. [Section 3] is intended to be codified as an integral part of Title 85, chapter 2, part 3, and the provisions of Title 85, chapter 2, part 3, apply to [section 3].

NEW SECTION. Section 5. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 6. Retroactive applicability. [This act] applies retroactively within the meaning of 1-2-109, to applications currently pending with the department of natural resources and conservation on or after [the effective date of this act] and to applications currently pending with the department for which a commitment to a funding agreement exists for the preparation of an environmental impact statement.

NEW SECTION. Section 7. Effective date. [This act] is effective on passage and approval."

-END-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
February 5, 1993

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration Senate Bill No. 225 (first reading copy -- white), respectfully report that Senate Bill No. 225 be amended as follows and as so amended do pass.

Signed: Don Bianchi  
Senator Don Bianchi, Chair

That such amendments read:

1. Page 2, line 12.

Following: "counsel"

Insert: "and the public service commission"

-END-

# JERRY ANDERBERG and ASSOCIATES

## Billings Landscape Associates

### Complete Landscape Construction & Design Underground Sprinkler Systems

Box 20354

(406) 656-4288

Billings, Montana 59104

1-28-93

SENATE NATURAL RESOURCES

EXHIBIT NO. 1

DATE 2/5/93

BILL NO. SB 172

Legislative Committee  
Montana State Legislature

Re: Permitting process for obtaining a well use permit

Dear Sir:

I have just been through the process of obtaining a water use permit for a 100 gal. per minute use of water for the property that I am using for a production nursery. This entire process was time consuming, expensive, unpleasant, and unproductive time for my business. I did, after considerable effort, obtain this water use permit; but it was a considerable waste of time and it was entirely more costly than was necessary.

I started the permit application on Feb. 05 and this took several trips to the DNRC office. These people were very friendly and courteous, but they could not help me with the permit other than give instructions on what to do. The permit was turned in March 26, 92.

On July 13, I received notice from NDRC that there were 7 objections to my permit. A meeting was set up to discuss objections with applicant and the objectors. This meeting was Aug. 5, 1992 and attended by myself and 6 objectors. The six objectors lived over a quarter of a mile away from the well and had never met me, had no knowledge of my business, had no idea in fact that I was endangering their water supply, and had no investment in the permit process at this time. The expense of preparing a defense and presentation was entirely mine. By law, the state could not help me prepare for this meeting. Discussion was heard and recorded. I agreed to modify my permit slightly and sent a letter stating so on Aug. 07. No objections were recorded to my revised permit and I was issued a permit on Oct. 20, 10 1/2 months after starting the permit process.

The aquifer under my nursery property has thousands of gals. per minute in supply. I was applying for a very small amount of the reserve and had to undergo considerable expense, time, and bother to get this permit. Business cannot operate in this fashion any longer in Montana. Something has to stop this long, time-consuming process.

Respectfully Submitted

  
Jerry Anderberg, Pres. - Jerry Anderberg and Assoc. Inc.

President  
TERRY LINDSAY  
Vice President  
FRED BOYCE  
Secretary  
RODGER FREIER



Directors  
PAT BYRNE  
CURTIS SCHELLE  
BOB CHAMBERLIN  
MARVIN DEBUFF

1. Since 1973 when Montana's permit law came into effect there has been an exemption of up to 100 gpm to allow small water users, such as agriculture and small business to survive. **This exemption has not caused excess usage and has helped Montana's economy!**
2. Since July 1, 1991 this exemption was lowered to 35 gpm not to exceed 10 acre feet per year, except that a combined use from the same source cannot exceed 35 gpm.
3. This permitting is another bureaucratic nightmare that is killing small business and agriculture in Montana!. Montana's economy is dying and laws such as this are the reason.
4. Montana's underground water is not overused but in fact has not even started to be developed! As an example: Giant Springs (a small leak of underground water) produces +200,000,000 gallon per day which is much more than the total amount of water that " all the people of Montana" use for domestic purposes - (public & private). **This is just a minute portion of the vast underground water supply Montana possesses!!**
5. Ground water levels are not directly affected by current dry spells or surface water. **Ground water is a separate resource!**
  - a. Ground water moves a few feet per year
  - b. Ground water is supplied from snow packs hundreds of years in the past.
6. Well owners that need the use of water at a rate greater than 35 gpm and less than 100 gpm:
  1. Stock Watering
  2. Feed Yards
  3. Cemeteries
  4. Schools
  5. Parks
  6. Car Washes
  7. Silo Operators
  8. Road Construction
  9. Churches
  10. Mine Operations
  11. Homeowner Irrigation
  12. Sawmills
  13. Motels; Restaurants
  14. Rodeo Grounds; Fairgrounds
  15. Fire Insurance Requirements
  16. Nurseries
  17. Golf Courses
  18. Agriculture

Most of the above uses need the higher rates of flow for short periods of time or no use at all (Fire Insurance.)

SENATE NATURAL RESOURCES  
EXHIBIT NO. 2  
DATE 2/5/93  
BILL NO. 52172

7. The DNRC states that they can issue a permit in 5 or more months if there is no objection!

- a. The procedure usually takes far longer.
- b. Objections are automatic in the Missouri River drainage and elsewhere!!  
Montana Power Co. objects to all
- c. Objections either drag the process into years or a permit cannot be obtained especially with the Basin Closures being placed on Montana's Drainages.

8. The costs of administering and enforcing permitting:

- a. Colorado put in full withdrawal permitting resulting:
  - 1. Cost \$1.2 million plus
  - 2. Cut development severely
- b. Wisconsin - Full Permits
  - 1. Cost \$1.7 Million
- c. Oregon - Notification only
  - 1. Cost \$463,000

Very few states have permitting, but the ones that do pay an extreme price!  
Montana does not have a need for permitting below the 100 GPM.

9. The DNRC collects \$2,975 in permit fees for permits between 35 gpm & 100 gpm.

- a. How much does it cost to administer this bureaucracy?
- b. Permitting in other states has been used to retard or stop development.**

**Montana needs to develop, not stop growth!**

c. A minuscule permit fee of \$2,975 is or will be depriving the state of millions of dollars in development as well as wages and taxes!

Montana needs the permit exemption to be 100 GPM!

EXHIBIT # 2  
DATE 2-5-93  
SB-172

Conclusion: "USE IT OR LOSE IT!"

There is a poor conception that underground water in Montana is like a large barrel that lowers as we use it!!

**This is absolutely wrong!**

Underground water moves through the fissures and voids as the surface water does in the rivers and streams "except at a much slower rate."

- a. Rivers move at a rate of feet per second
- b. Groundwater usually moves at a rate of a few feet per year!

**The idea of conserving ground water by not developing it is a fallacy!** If Montana does not develop (drill wells) its underground water then it moves out of the state and people in Mississippi or some other state use it.

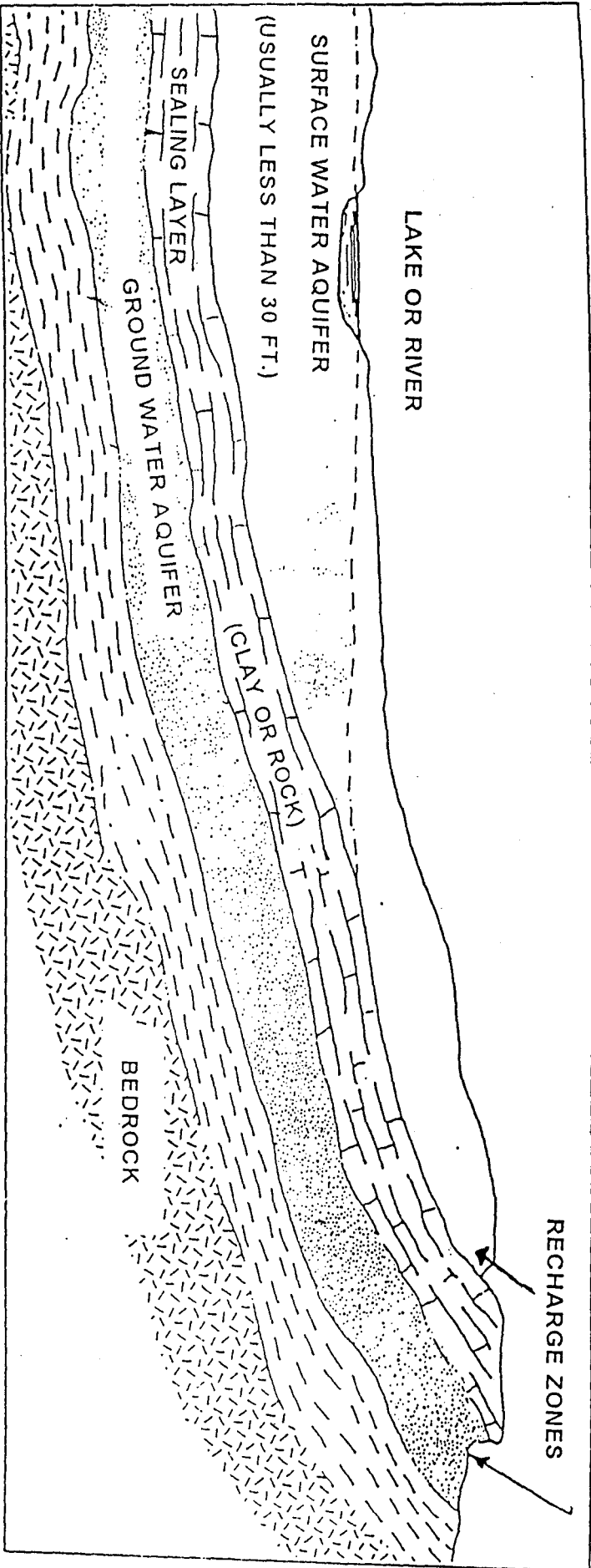
**The idea that developing and using ground water depletes it is pure hogwash!!** Actually, using an aquifer can clean the water ways and increase its yield.

Montana has very few areas where ground water levels are lowering and even in those places water withdrawal probably is not the cause of lowering!! Recharge to ground water is from the snow and rain in the mountain ranges. This recharge varies by seasons and by yearly increased or decreased precipitation. Thus the aquifer recharges are in surges and lows caused by natural processes!!

Montana is a water rich state that is just beginning to develop its ground water! The state should encourage ground water development and use within the state instead of allowing our water to be lost to other states. Montana's economy depends on this water so lets **"Use it and not lose it!**

OCCURRENCE AND MOVEMENT OF GROUNDWATER

*Mountains*





Homebuilders Assoc. of Billings  
252-7533

S.W. Montana Home Builders Assoc.  
585-8181

Great Falls Homebuilders Assoc.  
452-HOME



Flathead Home Builders As:  
752-2522

Missoula Chapter of NAHB  
273-0314

Helena Chapter of NAHB  
449-7275

Nancy Lien Griffin, Executive Director  
Suite 4D Power Block Building • Helena, Montana 59601 • (406) 442-4479

**SB 172**  
**Revise Exemptions for Ground Water Permits**

Recommend:  
**Do ~~not~~ Pass**

Mr. Chairman, Ladies and Gentlemen of the Committee:

Nancy Griffin, Executive Officer, Montana Building Industry Association, representing six local associations and 800 small businesses serving Montana's housing needs. Our organization urges a do ~~not~~ pass for the following reasons:

**1. Application processes represent delays in home financing.**

In many situations homeowners making application for a groundwater permit are subject to unnecessary delays. Often the permitting process requires more than merely registration of the well, and requires notice to adjacent property owners, fueling imagined competition for water resources among neighbors. Mortgage insurers and lenders often find that delays in permitting impact timely loan processing and create unnecessary bureaucratic hoops for the homeowner to jump through.

**2. Permit fees impact housing affordability.**

Housing today is subject to many fees and special permits, together these assessments constitute a barrier to affordable housing. Building permit fees, utility hookup fees, right of way fees, infrastructure development district fees, appraisal fees, loan servicing fees, title fees, filing fees. As each entity works slowly away at the loan limits each house is bit by bit impacted, until the final figure finally eludes the middle income Montanan, that group of Montanan most in need of affordable housing.

We urge a do ~~not~~ pass, and urge this committee to consider it's action carefully with regard to the need for public policy which should provide incentives, not disincentives for affordable housing.

LEGISLATIVE NATURAL RESOURCES <sup>3</sup>  
EXHIBIT NO. 3  
DATE 2/4  
BILL NO 53 172

Senate Bill 172 - Groundwater Exceptions

Current Law: A water user must obtain a permit from DNRC for most new water uses. There is an exception from the permit requirement for groundwater wells or developed springs with a maximum appropriation of 35 gallons per minute (gpm) or less, not to exceed 10 acre-feet per year. Only one 35 gpm well per aquifer is entitled to the permit exception. This is to prevent abuse by water users who would drill a series of 35 gpm wells into a single aquifer to avoid the permit requirement.

History: The permit exception was reduced from a 100 gpm to a 35 gpm by the 1991 legislature as part of a bill that redefined groundwater. Prior to 1991, groundwater was defined as water beneath the ground surface which was not part of the surface water. In 1991, groundwater was redefined to be any water beneath the ground surface, regardless of its relationship to surface water.

Existing water users were concerned that the new groundwater definition would allow infiltration galleries to avoid the permit process. Infiltration galleries essentially appropriate surface water but are considered as groundwater under the new definition. Based on this concern and the original intent of the exception which was to allow domestic groundwater wells, the 1991 legislature reduced the exception to 35 gpm. (35 gpm is considered ample water for normal domestic uses.)

Effect of SB 172: SB 172 raises the permit exception back to 100 gpm, eliminates the volume limitation of 10 acre-feet per year, and allows an unlimited number of wells, less than 100 gpm, to be drilled into a single aquifer. This would reduce the ability of existing water right holders to protect their water rights. Under SB 172, someone could install a infiltration gallery in 1993 and essentially withdraw surface water when other more senior surface water appropriators do not have enough water to fulfill their water rights. SB 172 could also led to abuse by allowing a single user to install a series of 99 gpm wells into a single source without having to go through any review of the impacts on existing surface and groundwater users. SB 172 also has a negative fiscal impact.

Prepared by Holly Franz  
for the Montana Power Company  
February 4, 1993

SENATE NATURAL RESOURCES

EXHIBIT NO. 4

DATE 2/4

BILL NO. SB 172

HJF00719hjf

TESTIMONY IN OPPOSITION TO  
SENATE BILL NO. 172

Groundwater provides a vital and economically irreplaceable source of clean, safe and potable water to Montana homes, industry, and agriculture. In many areas, we have already seen that groundwater resources are finite and not inexhaustible. As with any natural resource, uncontrolled use or "mining" of groundwater will ultimately result in degradation and exhaustion of supplies.

A production well of 100 gallons per minute capacity is capable of withdrawing approximately 160 acre-feet of groundwater per year. This is 16 times the current appropriation allowed under exception to the permit requirements.

To maintain a safe, sustained yield from any aquifer requires that withdrawal rates cannot exceed recharge rates over the long term. Recharge comes from precipitation which is not lost to evaporation, transpiration, or run-off. In Helena, where annual precipitation totals less than one foot per year, a 100 gal/min production well would require more than 200 acres of supporting recharge area.

According to the fiscal note accompanying this bill, approximately 36 large well permit applications may be expected each year under the current regulations. This implies commitment of approximately 12 square miles of recharge area each year to support the uncontrolled pumping potential of these wells. Worse, we would expect more large wells to be drilled if current permit requirements are relaxed.

It is far from clear that sufficient recharge area exists to support current groundwater withdrawals from many aquifers in Montana. Any legislation which further promotes "mining" of groundwater, will certainly hasten the onset and increase the magnitude of problems associated with reduced groundwater availability and deteriorating groundwater quality. As such, Senate Bill No. 172 must be considered less protective of a vital resource, and its potential for great damage to the "many" must be weighed carefully against its potential small benefit to the "few".

I strongly urge this committee to "kill" this short-sighted, and potentially damaging bill.

Vivian Drake  
75 Lincoln Road West  
Helena, MT 59601

SENATE NATURAL RESOURCES  
EXHIBIT NO. 5  
DATE 2/4  
BILL NO. SB 172

TESTIMONY OF THE  
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION  
ON SENATE BILL 172, FIRST READING

BEFORE THE SENATE NATURAL RESOURCES COMMITTEE

FEBRUARY 5, 1992

**A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE EXCEPTIONS TO GROUNDWATER PERMIT REQUIREMENTS UNDER THE MONTANA WATER USE LAWS: AMENDING SECTION 85-2-306, MCA; AND PROVIDING AN EFFECTIVE DATE."**

The Department of Natural Resources and Conservation (DNRC) opposes Senate Bill 172 which seeks to increase the size of water wells that are exempted from the permitting provisions of the Montana Water Use Act. Currently, wells which produce *35 gallons per minute* or less, not to exceed 10 acre-feet per year, are exempted. Under this legislation, the size of wells exempted from the permitting review would increase nearly threefold to those capable of producing *100 gallons per minute* or less.

In 1973, with passage of the Montana Water Use Act, water wells having a flow rate of 100 gallons per minute or less were exempted from the statute's permitting requirements. Although this exemption remained unchanged for 18 years, the 1991 legislature recognized that certain exempted wells were capable of adversely affecting existing water users. In response, the exemption limit was reduced to wells having flow rates of 35 gallons per minute or less, not to exceed 10 acre-feet per year.

Although this change provided greater safeguards to the users of Montana's groundwater resources, it did not substantially increase the state workload needed to process permit applications. Since July 1, 1991 -- the effective date for the exemption limit change -- through December 31, 1992, only 52 permit applications were received for wells falling within the 35 to 100 gallon per minute size range. Viewed another way, during each month of the 18-month period involved, the department received an average of less than three groundwater permit applications for wells having flow rates between 35 and 100 gallons per minute.

Under the present statute, almost twenty percent of the permit applications for wells in the 35 to 100 gallon per minute size range received objections. In response, some hearings were held and, before the wells could be developed, conditions were stipulated to protect the rights of existing users. Yet, under the changes proposed in Senate Bill 172, owners of these wells which have the potential to interfere with existing water right holders could automatically receive a certificate of water right by filing a notice of completion with the department. There would be no consideration of potential adverse effects upon other water users. There be no requirement for a public review; no

DEPARTMENT OF NATURAL RESOURCES

PERMIT NO. 6

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opportunity to file objections; and the holding of hearings or the resolution of differences between concerned parties would not occur. Simply stated, with the statutory changes called by this legislation, the protection afforded the users of Montana's groundwater resource is lessened, and the potential for adverse impacts to those users is increased.

The bottom line in this matter is the protection of existing water users from the potential adverse effects of certain new water wells. The law, as it now stands, exempts the vast majority of wells drilled in Montana -- those less than 35 gallons per minute in size -- from the permitting requirements of the Montana Water Use Act. Wells larger than 35 gallons per minute are more likely to create adverse impacts on existing water users and are subject to the review inherent in the permit application process. The number of wells subject to such a review pales in comparison to those having an exempt status. At the same time, based on the objections received during the permit review process it is clear that this small number of wells is closely scrutinized by the public.

It is important to note that, after the permit exemption was lowered to 35 gallons per minute by the 1991 Legislature, there was no apparent decline in well drilling activity or the market for small wells. In fact, the drilling of such wells increased by almost 12 percent from 1991 to 1992. In 1992, 2,579 groundwater wells were issued a Certificate of Water Right by the simple filing of a Notice of Completion form. In stark contrast, only 38 wells were the object of a water use permit review. Certainly the owners of wells subject to the permitting review had to conduct more pre-planning in their effort to tap a groundwater source. At the same time, the permit review did not place an onerous burden on the parties involved. For the most part, the department concluded the review process in under three months. Further, only a fourth of the permit applications received objections with an even smaller percent going to hearings. In the end, most of these water well permit requests were granted. In certain instances, conditions were required to safeguard the rights of existing users. Without the lower 35 gallon per minute exemption, this protection would not have been afforded.

In summary, the department opposes Senate Bill 172 and urges retaining the present 35 gallon per minute groundwater permit exemption. As it now stands, the law provides important safeguards to the existing users of Montana's groundwater and does so in a manner that does not impose a large burden of compliance on those seeking to use the state's vital groundwater resource.

DATE 2-5-93

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: SB 172

Name	Representing	Bill No.	Check One	
			Support	Oppose
FAED J BOYCE	BOYCE DRILLING INC.	SB 172	X	
Theresa Ward	4-Star Drilling	SB 172	X	
Don Ward	Four Star Drilling	SB 172	X	
CURTIS Schelle	American Drilling	SB 172	X	
Curtis Carlson	Carlson Drilling	SB 172	X	
Bud Jacobson	Jacobson Drilling	SB 172	X	
Myrtle Jacobson	Jacobson Drilling	SB 172	X	
ROBERT SAURER	SAURERS Pump Service	SB 172	X	
<del>Thomas Beven</del>	Beven Drilling	SB 172	X	
Rick Byrne	Pat Byrne Drilling	SB 172	X	
Pat Byrne	Pat Byrne Drilling	SB 172	X	
Vicki L. LAUT	EXEC Sec. Montana Water Well Drillers Assoc.	SB 172	X	
Linda Lindsey	Lindsey Drilling	SB 172	X	
Terry Lindsey	Lindsey Drilling	SB 172	X	
Joyce Byrne	Pat Byrne Drilling	SB 172	X	
Lila Byrne	Pat Byrne Drilling	SB 172	X	

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DATE 2/5

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: SB 172

Name	Representing	Bill No.	Check One	
			Support	Oppose
Bisa Eslinger	Eslinger Drilling	SB172	X	
Sharon Matheus	Eslinger Drilling	SB172	X	
Randy R. Matheus	Eslinger Drilling	SB 172	X	
Douglas Bakke	Camp Well Drilling	SB172	X	
Phil Bakke	Camp Well Drilling	SB 172	X	
Edger Green	Hi LINE DRILLING	SB172	X	
Bum Peter	PETER Drilling	SB172	X	
Bob Chamberlin	Okeefe Drilling	SB171	X	
James T. Nelson	Nelson Pump Corp	SB172	X	
Harry W Bond	Bond Drilling Inc	SB172	X	
STEVE HANSEN	HANSEN ENV. DRILLING	SB172	X	
Larry Jennings	Jennings Drilling	SB 172	X	
DAN O'KEEFE	O'Keefe Drilling Co	SB172	X	
Clint Nelson	Okeefe Drilling	SB172	X	
Ralph Price	Midland Equipment	SB172	X	
Kent McCall	Midland / F. Plement	SB172	X	

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DATE 2-5-93

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BILLS BEING HEARD TODAY: SB 172

Name	Representing	Bill No.	Check One	Support	Oppose
Patrick J. Byrne Sr	Pat Byrne Drilling	SB 172	X		
Allan Ratzliff		SB 172	X		
Nelson J. Brothers	Dynamite Drilling	SB 172	X		
Dwight H. Brothers	Dynamite Drilling	SB 172	X		
Terence J. Gardner	Gardner Inc	SB 172	X		
Elmer Gardner	Gardner Inc	SB 172	X		
JM Bell Mills	JM Company	SB 172	X		
Phelan Meyer	2M Company	SB 172	X		
Ken Schell	American Drilling	SB 172	X		
Susan Jensen	American Drilling	SB 172	X		
Doreen Kupfer	Rock Creek Drilling	SB 172	X		
Norma Kupfer	Rock Creek Drilling	SB 172	X		
Andrew K. Eslinger	Eslinger Drilling	SB 172	X		
Ralph Eslinger	Eslinger "	SB 172	X		
Steve Eslinger	Eslinger "	SB 172	X		
Myra Eslinger	Eslinger Drilling	SB 172	X		

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SENATE COMMITTEE ON

Natural Resources

BILLS BEING HEARD TODAY: SB 172

Name	Representing	Bill No.	Check One Support Oppose	
Daniel Nelson	Eggs Drilling C.	SB172	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Alaney Gustin	Homebuilders Assoc.	SB172	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Louis Subhwan	MT Supply Co.	SB172	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Dick Smith	Mountark Supply	SB172	<input checked="" type="checkbox"/>	<input type="checkbox"/>
MARK SHARLEY	—	SB172	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Holly Franz	MT Power Co.	SB172	<input type="checkbox"/>	<input checked="" type="checkbox"/>

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