

## **MINUTES**

### **MONTANA SENATE 54th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON NATURAL RESOURCES**

**Call to Order:** By **CHAIRMAN LORENTS GROSFIELD**, on February 13, 1995, at 1:00 PM

#### **ROLL CALL**

##### **Members Present:**

Sen. Lorents Grosfield, Chairman (R)  
Sen. Larry J. Tveit, Vice Chairman (R)  
Sen. Mack Cole (R)  
Sen. William S. Crismore (R)  
Sen. Mike Foster (R)  
Sen. Thomas F. Keating (R)  
Sen. Ken Miller (R)  
Sen. Vivian M. Brooke (D)  
Sen. B.F. "Chris" Christiaens (D)  
Sen. Jeff Weldon (D)  
Sen. Bill Wilson (D)

**Members Excused:** None

**Members Absent:** None

**Staff Present:** Todd Everts, Environmental Quality Council  
Theda Rossberg, Committee Secretary

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

##### **Committee Business Summary:**

Hearing: SB 330, SB 331, SB 346, SB 362, SB 371  
Executive Action: SB 234

#### **HEARING ON SB 346**

##### **Opening Statement by Sponsor:**

**SEN. GARY FORRESTER, SD 8, Billings**, said SB 346 allows for a compromise position for cleanup of some waters that have been disputed for a number of years, and without SB 346 will probably continue to be in dispute.

##### **Proponents' Testimony:**

**Steve Pilcher, Administrator Water Quality Division, Department of Health and Environmental Sciences**, said the department has attempted to deal with the problem that they have been facing in

administering the Montana Water Quality Act. When Montana streams were classified in the 1960's, water quality information was very limited, and a number of streams were not classified at the time. A good example is the upper Blackfoot River near Lincoln where mining activities of the Mikehorse, Anaconda, and Paymaster Mines seriously impacted the quality of the Blackfoot River. SB 346 provides a mechanism to restore those waters that have suffered from past mining operations, to a better quality.

#### **EXHIBIT 1**

**Alan Joscelyn, Attorney, Helena,** said he worked with DHES in helping to put SB 346 together. The bill would allow the department to change the standards to adopt rules establishing temporary water quality standards in Montana.

**Florence Orr, Pony, representing the Northern Plains Resource Council,** said they were in support of SB 346 as a vehicle to prevent further degradation of water quality in Montana. They have over 2,000 members who believe in good stewardship of their natural resources. The permittee must be responsible for the quality of water, but that has not been the case in Pony where the Chicago Mining Company left tailings that have contaminated the water.

**Larry Brown, representing the Agriculture Preservation Association,** said he agrees with the department that there is a need for flexibility to reclassify the waters that do not support a designated use. He supports SB 346.

**Jim Barrett, Cooke City,** agrees that SB 346 represents a positive step towards dealing with problems that have been ongoing for 40-50 years. In Cooke City there is a large corporation, that resides in another country, that has a smaller subsidiary that is a permittee for a proposed mine there. But this permittee does not have many resources to carry out any kind of plan for clean-up. There needs to be some assurance that a clean-up plan would be carried out as a stipulation for a permit.

#### **Opponents' Testimony:**

**Brian Kuehl, representating the Greater Yellowstone Coalition,** which is a coalition of over 6,000 individual members and over 100 corporation and organizational members, said he was against SB 346 because the classification of a stream means that a stream is fishable and swimmable or can become fishable and swimmable. Subsection 3 states: "When the board adopts temporary standards, the goal is to improve water quality to the point at which all designated beneficial uses are supported." That is no reason for reclassifying a stream. If the stream is not meeting its uses, it should be cleaned-up. The water quality standards should not be lowered to establish temporary standards. There may be a need for a small temporary standard, but not as broad and widespread as the bill indicates.

**Jim Jenson, Director Montana Environmental Information Center,** said he was against SB 346 because it was not needed. In the upper Blackfoot River that has been significantly damaged over the years by historic mining activities, the water is being cleaned-up under a permit granted last year to Asarco who owns the mine. The permit has specific goals that are achievable to meet the water quality standards. He wondered why there would be a bill to reclassify that stream.

**Debby Smith, Helena Attorney representing the Sierra Club,** said the goal behind SB 346 is to provide temporary water quality standards that are more stringent on a parameter-by-parameter basis than existing water quality standards for a particular water body whose designated beneficial uses are not being met. Already in place under the Water Quality Act are rules and regulations for clean-up of streams. She requested that the committee table the bill. **EXHIBIT 2.**

**Kenneth Knapp, Executive Director Montana River Action Network,** said he represents 700 members in the state. He agrees with the opponents who testified that the bill is not needed. He said for nearly 15 years he made his living as an outdoor writer for over 200 magazines throughout the world, promoting Montana. He said water quality should be improved, not degraded. **EXHIBIT 3.**

**Joe Gutkoski, President Madison/Gallatin Alliance,** said he supported the concept of SB 346, but it is entirely too open-ended. The 20 year time limit is too long for clean-up.

**Questions From Committee Members and Responses:**

**SEN. KEN MILLER** said it seems that the DHES already has the applicable laws for what the bill intends to do, according to testimony by **Ms. Smith** and **Mr. Jensen**. **Mr. Pilcher** said he would agree with a portion of their testimony. He did not agree that the additional legislation is not needed. The bill legitimizes the process that was currently in place. Regardless of testimony, the upper Black Foot River and many others in the state do not meet the assigned water quality standards. There are stream segments that are in violation of the Water Quality Act and their standards. SB 346 would allow people to work toward compliance without being in violation of the Water Quality Act.

**SEN. B. F. "CHRIS" CHRISTIAENS** asked **Mr. Pilcher** if the streams were already over-classified, what is being done by the DHES for mitigation. **Mr. Pilcher** replied that they were working with the responsible parties to address known problems of historic degradation. The problem in the upper Black Foot River occurred over many years and was not just a single incident of the Mikehorse Mine. There are many streams where there is not a plan in place for clean-up. The upper Black River is a voluntary program undertaken by Asarco and the Anaconda Company. They are providing the funds for corrective actions, as well as for

department sponsored over-sight to ensure that activities are appropriate.

**SEN. CHRISTIAENS** asked if the department thought that SB 346 would down-grade Montana streams. **Mr. Pilcher** said the bill in no way down-grades water quality. The bill recognizes that some of those streams do not and have not met the standards that were established for their classification. The bill does not impair their ability to work toward the goal outlined in the Federal Clean Water Act.

**SEN. TOM KEATING** asked **Mr. Pilcher** if he would give him an example of what he meant by bringing the water up to standards. What is Asarco doing to help improve the quality of the water? **Mr. Pilcher** responded that the water does not meet the standards. The companies have developed and submitted to the department for approval a phased approach to restore the quality of water in the upper Black Foot River. A lagoon has been put in to provide treatment to improve the quality of water coming out of the adit. The next phase would be to take that discharge and apply it to a wetlands area to facilitate even further implementation of the clean-up. They can only do so much so fast for the clean-up.

**SEN. KEATING** asked if that was kind of a sedimentation and filter process. **Mr. Pilcher** answered that is correct, and the treatment is also being enhanced to try to reduce the heavy metals concentration. **SEN. KEATING** asked if the water quality there was affected by agriculture and timber run-off. **Mr. Pilcher** said there could be other industries contributing to the degradation, but the mining in the area far over-shadows other activities.

**SEN. MACK COLE** asked if there were a number of other rivers that would fall into that same category. **Abe Horpestad, Water Quality Division**, said they would prepare a list of the other rivers and streams for the committee. He said there were approximately 25 streams he was familiar with.

**CHAIRMAN LORENTS GROSFIELD** asked if on Page 2, Line 9 that says: "If rules are adopted regarding temporary standards,..." implies that they may not be adopted? **Mr. Pilcher** said it was their intent to adopt rules to implement the provisions in SB 346.

**CHAIR. GROSFIELD** said on Page 5, Lines 4 and 7 the bill says: "according to the plan's schedule or modifications to that schedule made by the board or department." He didn't see anywhere in the bill the provisions for the board or the department to make modifications. He asked how modifications would be made. **Mr. Pilcher** said the decisions and temporary standards would be made by the board. If there was a need to modify the schedule, the proposed application would have to be submitted to the board.

**CHAIR. GROSFIELD** asked **Claudia Massman, Attorney, Water Quality Division**, if it should be spelled-out in the bill how it would

work because the bill doesn't address modification. **Ms. Massman** said that probably should be spelled-out. They thought that during the 3 year review the department would review the plan and see if it needed to be revised.

**CHAIR. GROSFIELD** said supposing someone applies for a temporary water quality standard and after 5 years something happens and they take off. Maybe it would be 15 years before someone else would tackle it. Would they be able to start with 6 years or is it the intention that the 20 years have gone by and there is no further opportunity to fix that stream? **Mr. Pilcher** said they have not addressed that specific scenario, but he thought that if someone came in and wished to continue that plan they would be given an opportunity to do so. The elimination of temporary standards would not prohibit the department from seeking through its enforcement authority under the Water Quality Act, further implementation of the plan and further corrective measures by an identified responsible party. Just because they decided they didn't want to play ball anymore doesn't mean they would be relieved of their responsibility.

**Closing by Sponsor:**

**SEN. FORRESTER** said over the years he has seen all the damage that has been done to the streams. For the last 30-40 years there has never been anything done about that. The bill is an honest attempt to do something to correct those problems. For the first time, even some people of the environmental community are supporting something that would clean up water. That was the first time that a bill reflected the reality of the situation at hand. He said the bill would give them a chance that Cooke City and the Boulder area streams would be cleaned-up. The DHES did an excellent job in drafting the bill. It won't satisfy everyone, but it will benefit the people of Montana. He agreed that there was a need for some technical amendments regarding rule-making. The bill had been carefully drafted and the people of Montana will be able to see that the Legislature is really working on the problem.

**HEARING ON SB 330**

**Opening Statement by Sponsor:**

**SEN. CHUCK SWYSGOOD, District No. 17, Dillon,** said SB 330 revised the water quality nondegradation provisions of the Montana water quality laws, and corrects some of the problems with the nondegradation process. The current process is difficult for the DHES to manage. The definition of high quality waters needs to be narrowed down so that only the actual high quality waters would be subject to the nondegradation process. Montana has a number of streams that have low quality water, particularly those in eastern Montana. A large number of intermittent streams that only run when it storms or rains are currently classified as high quality water and they shouldn't be.

**Proponents' Testimony:**

**John Fitzpatrick, Pegasus Gold Corporation,** said the concept of nondegradation has been in the Montana Water Quality Act for over 20 years and only in the last 3 or 4 years has the DHES tried to enforce the provisions. The concept is that waters should not be allowed to change by the addition of pollutants. SB 330 deals with the definition of high quality water and the statutes require that a body of water meet only one out of 240 numeric parameters to be considered high quality water. That is a broad definition because there are already a number of streams that have deteriorated because of previous activities. In some cases they are low quality because of natural conditions, such as the groundwater in central and eastern Montana. The bill identifies truly high quality waters and other waters are exempt.

**Doug Parker, Hydrologist, Crown Butte Mines,** said he favors the legislation because the definition of high quality water needs to be changed. Most of the other states have been very careful in how they define high quality water and have more workable regulations than Montana. Another portion of the bill addresses that there needs to be a longer period of review. An industry cannot invest large amounts of capital and in a 3 year review have a nondegradation process overturned. There cannot be capital improvements and expense subject to withdrawal after a short period of time.

**Don Peoples, Montana Technology Company of Butte,** said the nondegradation standards in the bill identify the high quality waters and those that are not. There are some serious problems and SB 330 addresses that. He asked for the committee's favorable consideration.

**Max Botts, Consultant Geologist with Hydrometrics, Helena,** said he had worked with water quality for 5 years. The last 3 years there have been dramatic rule changes in Montana. The regulatory frame-work has become more complicated and more difficult. There are nondegradation rules, mixing zone rules, and surface water standards. In developing those rules the department did a good job in trying to interpret what they felt was the intent of the Legislature. However, the rules are conflicting and complex and are the most stringent in the United States. Few other states have ground-water standards. Essentially all waters in Montana have been included as high quality with very few exceptions.

*{Tape: 1; Side: B}*

**Mr. Botts** said he didn't think industries in Montana could pass the nondegradation rules as they exist. He supports SB 330.

**John Bloomquist, Montana Stockgrowers Association,** said there are 3 changes in the bill that are good: 1) the change in the definition of degradation because it is entirely too broad, 2) the change in the definition of high quality water because it is

also too broad, and 3) applying the nondegradation policy where it should be applied to high quality waters. The bill provides those 3 changes that will provide a more workable and reasonable nondegradation policy for Montana.

**Larry Brown, representing the Agricultural Preservation Association,** said he agrees with **Mr. Botts** and **Mr. Bloomquist's** testimony. He supports the provisions in SB 330.

**Mike Murphy, Montana Water Resources Association,** said they support SB 330 because it provides a reasonable balance of the application of Montana's nondegradation issue. It provides a more positive approach for permitting.

**Jack Lynch, Chief Executive, Butte Silverbow,** said he agrees with those speaking in favor of the proposed changes to review definitions in terms of degradation.

The following proponents were not allowed enough time for their testimony:

**Don Allen, representing the Montana Wood Products Association,** supports SB 330.

**John Youngberg, representing the Montana Farm Bureau Federation,** supports the bill.

**Bob Williams, representing the Montana Mining Association,** would like to go on record as supporting SB 330.

**Jim Mockler, Montana Coal Council,** supports SB 330.

**Candace Torgerson, Montana Cattlewomen's Association,** said they support SB 330.

**Maureen Schwinden** supports SB 330.

**Opponents' Testimony:**

**Hope Stevens, Marysville,** said the bill is weakening the nondegradation standard for water. Both SB 330 and SB 331 will only respond to the wishes of a few. Most businesses decide to locate in Montana because of its natural beauty. Fishermen come here for the excellent fishing that Montana provides. Movie companies also come here for the natural beauty of the state. However, the movie "A River Runs Through It" could not be filmed on the Blackfoot River because the water was so polluted. Therefore, they filmed some of the scenes on the Gallatin River. That river is now being polluted by sewage from the Big Sky Resort. The Micron Company proposing to come into Butte would also want pure water. If everyone would practice responsibility and consideration, there would be no need for the bill.

**Steve Pilcher, Administrator Water Quality Division, DHES,** said he was in opposition to SB 330. He was surprised that some amendments had not been offered to the bill. Last session nondegradation was discussed at length in SB 401. The concept of nondegradation is a simple idea, but it is extremely difficult and complex to implement. The bill represents excessive reaction to the department's attempt to implement SB 401. In its current form the bill would seriously weaken the water quality program. Section 1, changes the definition of degradation which would require a complete revision of the water quality rules. The definition of high quality waters would restrict the application of nondegradation to only a small percentage of the waters in the western third of the state. The proposed change in the definition of interested parties, restricts citizen involvement in the process.

**Mr. Pilcher** said that **Mr. Joscelyn** indicated that some amendments would be offered. He said they were comfortable with the amendments and would change their position on the bill, but they were testifying on the bill as introduced. Section 2 of the bill is the one of most concern, in that it would establish water quality standards based on maximum contaminate levels and basically allow significant pollution to occur. If the bill passes as introduced, the Environmental Protection Agency will adopt their current standards in lieu of the proposal in the bill. The people of Montana would be facing two different water quality standards: one under the Water Quality Act, and another under the Federal Clean Water Act. Also, the EPA would withdraw their delegation of permitting authority and there would be two permits required for any waste discharge. Currently those responsibilities can be combined.

**Paul Hawks, Rancher, Sweetgrass County,** asked whether "directly affected" means on site or something next door. He said he was also a member of the Montana Stockgrowers and the Northern Plains Resource Council and they seem to be the only ones interested in water quality. Two years ago there was a problem and under SB 401 those problems were taken care of. He said he was offended that they didn't know about the amendments or what they were. He said the department is finally getting its act together, and we should see if it works.

**Jim Jensen, Montana Environmental Information Center,** said the bill would limit high quality water, and asked the sponsor what waters he is referring to. The waters that come out of the national parks or wilderness areas are high quality water and the rest of the waters can go down the drain in the bill. There are no federal laws that protect groundwater. The Legislature decided to protect the groundwater in Montana. The only protection that Montana has is the nondegradation Water Quality Act and this bill is throwing that away.

**Debby Smith, Helena Attorney representing the Sierra Club,** said they oppose the bill for all the reasons that have already been



stated. Nondegradation of the water is the law, and the Legislature cannot exempt most of the waters in the state from that protection.

**Richard Parks, Past Chairman, Northern Plains Resource Council,** said his interpretation of the bill was that only those people that have a direct property interest have an opportunity to participate in the process. He said he was a fisherman outfitter and high quality waters in Montana are his stock in trade even though he owns none of them. The NPRC opposes the bill and the amendments.

**Paul Roos, Fly Fishing Outfitter, Helena,** said he opposes SB 330 because it attempts to reduce the ability of Montanans and state agencies to protect against degradation of water quality.

**Florence Orr, Member of the Concerned Citizens of Pony,** said that any bill that would allow degradation of water should be tabled.

**Brian Kuehl, Greater Yellowstone Coalition,** said not to believe the rhetoric that nondegradation is shutting down industry. Clean water is important to industry, and there is sufficient flexibility in the nondegradation rules. The Crown Butte Mine near Cooke City has applied for a nonsignificant waiver under the nondegradation rules, because they believe that mine impacts to water quality will be nonsignificant. The rules should not be weakened.

**Ms. Garland, Lincoln,** said she lives near a new gold mine and it is important to keep the water in Montana at the highest quality possible.

**Bruce Farling, Montana Trout Unlimited,** said they oppose SB 330, and also there is no fiscal note with the bill. Because of the reclassification that will be required of all those streams it would require a lot of staff from the DHES. The streams that will come under SB 330 would be the Blackfoot River, Madison, Bitterroot, Rock Creek, Flathead Lake and others. **EXHIBIT 4.**

**Jim Barrett, representing the Beartooth Alliance, Cooke City,** said they oppose the bill for the same reasons stated earlier. He said ask yourselves the question: "is this progress or regress?"

*{Comments: the following opponents did not have time to testimony because of the lack of time.}*

**Allan Rollo, Montana Wildlife Federation. EXHIBIT 5.**

**Kenneth Knapp, Executive Director, Montana River Action Network. EXHIBIT 6.**

Dich Golder, Forsyth. EXHIBIT 7.

Donald Kern, Canyon Coal, Helena.

Robert Cunningham, Executive Director, Fishing Outfitters Association of Montana.

Jon Krutar, Rancher, Ovando.

Letter from the Missoula County Health Department. EXHIBIT 8.

Joe Gutkoski, President Madison Gallatin Alliance.

Questions From Committee Members and Responses:

SEN. FOSTER said on Pages 4 and 5 of the bill there were Water Quality Criteria. He asked Mr. Pilcher if he could provide the source of that table. He answered that the table included a combination of information from different sources. The column under Human Health represents maximum contaminant levels that were from the Federal Safe Drinking Act. The other numbers were from the Environmental Protection Agency that were listed under Aquatic Life: Acute and Chronic.

SEN. WELDON asked SEN. SWYSGOOD when the Board of Health adopted the nondegradation rules. He replied that it was sometime last summer. SEN. WELDON asked how many companies had to go through the permitting process under the new rules. SEN. SWYSGOOD said he wasn't sure, that would have to be answered by the DHES. Mr. Pilcher said no one has completed that process under the rules adopted under SB 401. SEN. WELDON said since no one has had to go through the rules process yet, how would anyone know if the new rule system is unnecessarily cumbersome. SEN. SWYSGOOD said that given the definition of "high quality water", it makes it impossible for anyone to conform to the standards. SEN. WELDON said if no one has attempted, how does anyone know it is impossible. SEN. SWYSGOOD said he assumed that agriculture, industry and others have a deep concern over the rules that it would be impossible to go through that process because of the strict standards.

SEN. BROOKE asked SEN. SWYSGOOD if he had amendments to the bill. SEN. SWYSGOOD said there would be some amendments offered on the bill. SEN. BROOKE asked if there would be another hearing on SB 330, because she understood the amendments change the bill significantly. CHAIR. GROSFIELD said that there are often substantive amendments offered to any number of bills that are dealt with in Executive Session. Until the amendments are dealt with, another hearing would not be considered.

SEN. BROOKE said there has been a lot of testimony about degradation of waters, and it seems that they cannot be brought up to a higher quality or standard. However, the Clark Fork River at Missoula has been brought up to a higher standard. She

asked **Mr. Horpestad** if he would comment on that. He said that many of the rivers have been brought up to a higher standard. The Clark Fork and the Yellowstone have improved significantly.

**SEN. BROOKE** asked if he thought the bill as introduced would go back to the days that would not allow the department to significantly improve waters. **Mr. Horpestad** said the bill as introduced would have most of the staff of the EPA working on it.

Closing by Sponsor:

**SEN. SWYSGOOD** said amendments would be offered to the bill, but they were arrived at by the department after the bill was introduced. He said he wasn't sure the amendments would satisfy some of the opponents, but he would hope some of the concerns would be addressed.

HEARING ON SB 331

{Tape: 2; Side: A}

Opening Statement by Sponsor:

**SEN. TOM BECK, District No. 28, Deer Lodge**, said SB 331 clarifies the Montana Water Quality Act. The purpose of the bill is to clearly define high quality waters, and make the nondegradation process apply to those waters. He said instead of explaining the bill step by step, he will let the experts testify on what they are trying to do with water quality. He said he was not trying to degrade water, but was trying to make drinking water feasible in all areas of the state, from a mine or anything else. He said he had some amendments that were drafted that the department and industry had come to a compromise on.

Proponents' Testimony:

**Sandy Stash, Manager of ARCO**, said she would like to talk about some of the technical issues that the bill is proposing. The proposal is consistent with EPA policy and what is occurring in other states. Regarding the metals criteria and whether metals should be measured by the dissolved method or the total recoverable method, she referred to a memo from the Office of Water Policy and Technical Guidance of the EPA. A quote from that memo says: "we strongly encourage the application of the Water Effect Ratio (WER) across a watershed or waterbody as opposed to application on a discharger by discharger basis, as a technically sound and an efficient use of resources." **EXHIBIT 9.**

They found that the dissolved metals were the ones that get into the fish, etc., not the total recoverable. Montana currently uses the total recoverable method and the bill suggests that they go to the dissolved metals. The EPA changed their guidance to states and to date 18 states have made that change. **Ms. Stash**

reviewed a chart regarding the clean-up in Silver Bow Creek.  
**EXHIBIT 10.**

The bill suggests what the numbers should be, and how they should be measured and how decisions should be made.

**Alan Joscelyn, Golden Sunlight Mine,** said the reason the bill was proposed was a need for definitiveness, consistency, and predictability. There are some significant problems in the Water Quality Act with compliance. He said there is an agreement that some of the points raised by the DHES will be addressed in the amendments. With his experience over the last 5 years he said SB 331 was a good bill.

**John Bloomquist, Montana Stock Growers Association** said they support SB 331. He said the definition of degradation and state waters was addressed in the bill. It recognizes that certain water bodies like ponds, lagoons, or water that has been used up by the land which are not state waters, and would not be subject to the pollution and other definitions that are in the Act. In Section 7, regarding intermittent streams, it doesn't make sense to make those streams that do not support aquatic life subject to water quality standards.

**Larry Brown, Morrison/Maierle Environmental Corporation** said he wanted to comment on the aspect of risk as it applies to the standards. The bill will give an opportunity for risk levels to be evaluated from a technical perspective.

**Don Peoples, Montana Technology Company of Butte,** said that he was in favor of SB 331. The bill is a common sense approach to dealing with water quality standards.

**Mr. Leavitt, member of the Tri State Information Council,** said he supports the changes that SB 331 is trying to make with the definitions of water quality.

**Doug Parker, Crown Butte Mines,** said that the Water Quality Act was an unworkable law and the changes needed to be made. He reviewed the arsenic changes in water that is proposed in SB 331.  
**EXHIBIT 11.**

He said he realized the DHES had concerns about the standards that are in the proposed bill, but they will be addressed in the pending amendments and those changes should satisfy the EPA and the department's concerns. The proposed change concerning intermittent streams that is in the bill is also important. He supports SB 331.

**Collin Bangs, Montana Association of Realtors,** said they have met with the health department and negotiated a change that would allow the use of septic tanks and drain fields in 80%-90% in areas that previously could not. The bill gives the state of

Montana a lot better protection of their water than what they had 2 years ago.

**John Youngberg, representing the Montana Farm Bureau Federation,** said the questions that would be asked would be about the impact on human health with the standards. He said they have been told that they were the standards from the EPA. SB 331 will not harm human health or aquatic life. He urges the committee's support of the bill.

**Jack Lynch, Chief Executive of Butte Silverbow,** said with the issue of standards come the compliance and then comes the issue of cost. Butte Silverbow, in an effort to comply with some of the standards, has spent millions of dollars on sewer and landfill. The proposals of SB 331 are reasonable and attainable. He urged the passage of SB 331.

*{Comments: the following proponents did not have time to testify do to the lack of time.}*

**Mike Murphy, representing the Montana Water Resources Association,** supports SB 331.

**Bob Williams, Montana Mining Association,** supports SB 331.

**Don Allen, Montana Wood Products Association,** supports SB 331.

**Candace Torgerson, Montana Cattlewomens Association,** supports SB 331.

THE FOLLOWING WRITTEN TESTIMONY WAS RECEIVED IN SUPPORT OF SB 331:

**Pam Willett, Broker/Owner ERA Property Store. EXHIBIT 12.**

**David Bailey, Kila, Montana. EXHIBIT 13.**

**Opponents' Testimony:**

**Hope Stevens, Marysville,** asked the committee members to please think carefully about who the people were that were supporting SB 331. They were nearly all large powerful industries. There are a lot of small businesses that employ people that are here to stay because of the high quality of water. Please consider their needs and those of who have children and grandchildren. She said she opposes the bill.

**Donald Kern, representing the Citizens' Coalition of Pony,** said SB 331 would preclude state water quality standards which were more stringent than federal regulations. SB 331 is a permit to pollute and is a slap in the face to any Montanan who appreciates the clean water supplies. The Berkeley Pit and numerous others remind us of what happens when regulations are not in place. The bill also lowers health standards for arsenic, mercury, copper,

and other heavy metals from mining waste. He said the bill is an attempt to subsidize the mining industries at the expense of the water quality in the streams. He suggested they go elsewhere to conduct their dirty business.

**Glenn Marx, Policy Director, Governor Mark Racicot**, said the state stands as an opponent to SB 331 as written, but if the department's amendments were adopted, the state would support SB 331. **EXHIBIT 15.**

**Steve Pilcher, Administrator Water Quality Division, DHES**, said they rise in opposition to SB 331 in its current form. He recognized and extended his appreciation to the sponsor and the industry representatives. He pointed out that DHES's standards were based on federal guidelines and were approved by the federal Environmental Protection Agency. **Mr. Pilcher** asked for the support of the amendments that will be offered to the bill. (For further DHES comments to the bill, see **EXHIBIT 16.**)

**Mr. Horpestad** gave a visual demonstration of dissolved vs. total recoverable methods for metal parameters. The copper that is settling to the bottom will be available for fish and bugs to eat, and be deposited on stream banks and eventually into the streams in response to thunder storms.

**Nick Golder, Rancher, Forsyth**, opposes SB 331.

*{Comments: Due to so much noise it was difficult to hear Mr. Golder's testimony and was not clear on the tape}*

**Chris Tweeten, Montana Department of Justice**, said they manage the Natural Resource Damage Program that was responsible for litigating the lawsuit against ARCO. He said they were seeing an excess of \$600 million in damages in the Clark Fork Valley. If SB 331 is enacted as introduced, it will undercut the scientific basis for the lawsuit that they worked on for 5 years and is now ready to go to trial within 2 years. **Mr. Tweeten** said the amendments that will be offered will address many of their concerns.

**Richard Parks, Northern Plains Resource Council**, said they rise in opposition to SB 331. The state may resolve their problems, but not necessarily resolve the public's problems. He said they went through a 2 year process to establish the present rules. There has been a lot of discussion that those rules were unworkable, but there were no facts supporting that. It is disrespectful for the time and the amount of money that had been spent on that process and the people involved in the Board of Health rulemaking process to require them to start all over again.

**Jim Jensen, Montana Environmental Information Center**, said Page 5, Line 7 the definition "industrial waste" is fine, but the change adds: "The term does not mean materials incorporated or

placed into a structure, facility, or location authorized in a permit issued by a state or federal agency." Suppose the Department of State Lands issued a permit for a mine with a tailings pond. They all leak pollutants but they would not have to get a permit from the health department. The bill says it is legal to place materials in a place where they may cause pollution to the water. He urged the committee to table SB 331.

**Becky Garland, Lincoln**, said SB 331 is bad for Montanans and opposes the bill.

*{Comments: the following opponents did not get to testify due to the shortage of time.}*

**Paul Roos, Fishing Outfitters Association**, opposed SB 331.

**Joe Gatkoski, Madison Gallatin Alliance** composed of 250 members that are opposed to the bill. Please table it.

**Debby Smith, Helena Attorney, Sierra Club**, opposes the bill.

**Brian Kuehl, Great Yellowstone Coalition**, opposes the bill and the amendments.

**Jim Barrett, Cooke City, Beartooth Alliance**, opposes the bill.

**Kenneth Knapp, Executive Director, River Action Network**, opposes the bill as presently written and any amendments.

**Paul Hawks**, opposes SB 331.

**Laurie Gano**, opposes SB 331.

**Dave Gano, Melville, Montana**. EXHIBIT 14.

*{Comments: the meeting adjourned at 3:00 pm and reconvened upon adjournment of the Senate at 6:30 PM.}*

*{Tape: 2; Side: B}*

#### Questions From Committee Members and Responses:

**SEN. FOSTER** asked **Mr. Pilcher** if there was a law suit between Arco and the State of Montana, and if it had any effect on SB 331. **Mr. Pilcher** said the lawsuit was not a driving force in their review of SB 331. The concern is whether or not the legislation would have some effect on the departments. **SEN. FOSTER** asked if the department would favor the bill, would it cause harm to the law suit. **Mr. Pilcher** said no, the bill or the amendments would not have an adverse impact on the law suit.

**SEN. CHRISTIAENS** asked **Mr. Bangs** if he would comment about the sewage disposal issue. **Mr. Bangs** said the regulations that were passed last session have resulted in outlying septic tanks that had been used for years, required advance treatment systems. He said it cost between five thousand (\$5,000) and ten thousand dollars (\$10,000) more to put in the advance treatment systems. Missoula County does not approve of the advanced treatment system. The problem is the state would require that system and the local counties do not approve the advanced treatment system. There is a huge problem with affordable housing in Montana. The cost of housing in the Missoula area has gone up by 90% in the last 10 years. Therefore, they have to make sure that another five or ten thousand dollars (\$5,000 or \$10,000) is not added to the cost of the individual houses. **Mr. Bangs** said they feel that they could go back to the regular septic tanks and still protect the water.

**SEN. WELDON** said if groundwater is contaminated to the standard listed in the bill, and the water is used for drinking water, it says they would be required to shut down the water supply. He asked **Mr. Pilcher** if he would respond to that. **Mr. Pilcher** said that the question is should we allow groundwater to reach 10 milligrams per liter, which would be the maximum nitrate level allowable for public health concerns. The DHES has to review subdivisions concerning the sewage and the water. If the department allowed them to degrade the water to the maximum contaminate level, then that subdivision could not be approved because the groundwater that was used for domestic use would be at the maximum level.

**CHAIR. GROSFIELD** asked **Mr. Joscelyn** if he could give the committee members some idea of what the amendments would be about. **Mr. Joscelyn** said that after the bill was drafted there was mutual interests addressed by the DHES and industry that involved several meetings, and some amendments were drafted. There were 45 amendments turned into the EQC for formal drafting. Those amendments were points that came up in discussions about the bill. About 99% of the points addressed were agreed upon. They still disagreed on how parameters should be measured and a couple of other areas.

**CHAIR. GROSFIELD** said **Mr. Tweeten** testified on the amendments from the Attorney General's office on the Natural Resource Damage Program. He asked **Mr. Collins** if he would respond to that. **Rob Collins, Chief Counsel, Natural Resource Damage Program**, said initially they agreed to oppose the bill, but when industry agreed to make some amendments, some of their opposition was addressed. There was still some concern with the site specific criteria and the method of measurement. He said there would be some additional amendments proposed by the DHES. With the amendments that have been proposed and the DHES proposed amendments, the Department of Justice would support the bill.



**SEN. BROOKE** said Page 12, Lines 9-11 says: "An application is considered complete unless the applicant is notified of a deficiency within the appropriate review period." She asked **Mr. Pilcher** if he thought there would be difficulty in notifying someone within the review period with the staff that they have. He answered that the section she referred to causes considerable problems from the resource standpoint with respect to being able to complete a review within 30 days. The application for some of the projects is lengthy; for example, the 7Up Pete project, it consisted of 27 volumes. To be able to complete a one-time review of an application like that within 30 days was impossible. **SEN. BROOKE** said she had a lot of questions about the bill, but if the amendments address those questions, they would be moot. She asked if Section 13 was amended out of the bill. **Mr. Pilcher** replied that there were amendments that addressed that concern. The initial time-frame will be changed with the amendments.

**SEN. BROOKE** said she had some concern about the Milltown Dam near Missoula. Discussion has gone on for some time now concerning the toxic waste there. She asked **Mr. Pilcher** what the bill would do to address that situation. He responded that in the bill as introduced, he would have some concerns about the water quality there. But with the amendments he did not think the review on that situation would change from what is already in place. The superfund process has to consider alternatives to the remediation plan, but does not believe SB 331 would have anything to do with that decision.

**SEN. KEATING** said the matter of "dissolved" and "totally recoverable" has come up several times. He asked **Ms. Stash** if she could give a scientific explanation why totally recoverable may not be necessary. She said the demonstration **Mr. Horpestad** was the best example of total suspended solids. The solid form was not harmful to fish. She read a quote from the Water Policy and Technical Guidance from the United States Environmental Protection Agency, dated October 1993. See **EXHIBIT 9. Page 2.** That quote says: "...This conclusion regarding metal bioavailability is supported by a majority of the scientific community within and outside the agency. One reason is that a primary mechanism for water column toxicity is absorption at the gill surface which requires metals to be in the dissolved form." Copper is a metal that is immediately dissolved and is bioavailable to the fish and should be protected against. There was some talk about costs of total recoverable vs. dissolved. The difference in the cost of testing those would be about \$12.00 per sample to measure what the correct way would be.

**Ms. Stash** said there was reference made regarding a law suit from an individual company. She questioned whether it was good policy to set policy for an entire state based on a single pending lawsuit. **SEN. KEATING** said the example she referred to was with copper; that the fish could not take them in through their gills because of the size of the chunks.

**SEN. KEATING** asked **Ms. Stash** if that applied to all metals. She answered yes it does. She said what makes metals problematic is when they go from metals to a metals salt.

**SEN. KEATING** said 10 milligrams of nitrate per liter was considered safe until SB 401 was enacted, and was safe for a fetus. Then someone says they would compromise and say 5 milligrams per liter. Why did the department go to 2.5 milligrams per liter and then someone says they would be happy with 5. **Mr. Pilcher** responded that 10 was a maximum contaminate level and was designed to protect the people consuming that water. He said 10 would be enough of a threat to infants that the water must be protected. It also depends upon the source of the nitrates and other factors. **Mr. Pilcher** said one level is based on public health and the other is on nondegradation of water.

**SEN. KEATING** said SB 401 dealt with nondegradation and mixing zones. Nothing was ever said about septic tanks or subdivisions. He said he knew that they were not supposed to degrade the water and public health is supposed to be protected. However, they also have to provide for the public to be able to live some place. When nondegradation levels are unachievable or so expensive, the department has actually made rules against the public. Somewhere there has to be a happy medium for nondegradation, the public, and the protection of public health. He said if he had a septic tank and drain field on his land, it should be his prerogative if he wants to degrade the water regardless of the law. He asked **Mr. Pilcher** why there wasn't a happy medium that serves all purposes. He replied that when SB 401 was enacted, he could recall many of the same statements that it was a mining industry bill, but **Dan Frazer**, who was then Chief of the Water Quality Bureau, made it clear that nondegradation could apply to a lot of activities not just mining. He said **SEN. KEATING** was right that they had to achieve a balance. The department made enough changes to allow continued growth in the State of Montana. Many subdivisions were reviewed and approved with on-site drain fields, so they were not being shut down completely. In areas where the level of nitrates were moving up toward public health standard, the department has asked for advanced treatment. Many subdivisions have been approved with the advanced treatment systems installed, and were working fairly well. The department will revisit that to make sure that they were being reasonable.

**SEN. CHRISTIAENS** said if there are 45 amendments to the bill, he didn't feel comfortable asking questions, not knowing what the amendments would do to the bill.

**CHAIR. GROSFIELD** said he had been informed that the amendments would be delivered to the committee by Thursday.

Closing by Sponsor:

SEN. BECK said in the demonstration, the committee members saw the difference between the dissolved metals and recoverable. He said the same metals are in the solid stone as what was dissolved. He said he left it up to the DHES and industry to work out the amendments. There are two amendments that they were not yet in agreement on. He said as Mr. Marx pointed out, one-part per billion for carcinogenic standards was pretty severe for industry to try to comply with. Industry wanted to go to one-part per ten-thousand and arsenic would be one in one-thousand. SEN. BECK said he would have to talk to the people that drafted the bill before he would make a commitment on that. There has to be some common sense in the law and where does the parameter end regarding drinking water. He said in the beginning he had 10 milligrams of nitrate per liter in the bill, and the people from the Helena Valley asked very strongly for an amendment. They were putting in above ground septic systems that were costing up to ten thousand dollars (\$10,000) as opposed to about twenty-five hundred dollars (\$2,500) for a normal septic system. If the 10 milligram per liter standard had been in there, they could have met the standard. There have been a lot of amendments and compromise on the bill, and industry and the department seem to be working out the problems. SEN. BECK would appreciate the committee giving serious consideration to the amendments to the bill.

*{Tape: 3; Side: A; Comments: there was so much background noise it was nearly impossible to hear the testimony or the tape}*

HEARING ON SB 362Opening Statement by Sponsor:

SEN. LARRY TVEIT, District No. 50, Fairview, said SB 362 is an act exempting certain activities from groundwater permit requirements. The rules adopted by the Board of Health for administration of the Montana Water Quality Act exempt some activities from groundwater requirements. A recent legislative audit performance review pointed out that the statutory authority for agencies other than DHES, gave them some jurisdiction over groundwater protection and was not clear. The report recommended clarifying in statute the authority of DHES to grant exemptions by referral to other permitting agencies for groundwater protection. In the alternative, the report recommended eliminating the exemptions that created the double permitting process.

Proponents' Testimony:

Gail Abercrombie, Executive Director, Montana Petroleum Association, said she attended meeting reviewing the audit of the

Water Quality Division and in the review they discussed the permitting requirements that were included in the rules. The report said there was not statutory authority to give the groundwater protection program to another agency. The report said either seek legislative clarification or eliminate the exclusions currently outlined in the rules. The DHES originally decided to concur with the elimination of the exclusions and were working on modifications to eliminate those exclusions. But the elimination of those exclusions will result in a significant number of additional activities requiring permits. Some of the facilities excluded from permitting requirements were hard rock mining operations, some oil and gas operations, and others. The result will be a lot more permitting requirements.

**Ms. Abercrombie** said in December some of the water quality representatives came to Billings and met with some of the industry people. They discussed groundwater quality permit rule-making by the department. Industry felt that the department had selected the wrong alternative to correct the legislative auditor's concerns. There was a question as to whether or not both exploration and production would need separate permits. The water quality representative said he didn't think so, but there were no clear assurances. There was no objection to the \$50 permit fee, but there were producers that did object to the other proposed increases. For example, for the groundwater protection permit with the Water Quality Division, there will be an additional permitting fee of \$250. The staff of the Board of Oil and Gas Conservation have done a good job of enforcing the environmental rules. She encouraged passage of SB 362.

**Dennis Iverson, representing the Northern Montana Oil and Gas Association,** said they support SB 362. He said the elimination of the exclusions of the permit process would cause extreme hardships to the regulated public and also the DHES.

**John Youngberg, representing the Montana Farm Bureau Federation,** said they support the bill because it codifies that which is already in the rules. It doesn't seem feasible to take something that is permitted in one area and turn it over to another area.

**John Fitzpatrick, Pegasus Gold Corporation,** said they support SB 362 as it was introduced. Metal mines are not exempt from groundwater permitting because they are required to get a formal permit from the DHES, and groundwater is taken into consideration when permits are issued by the Department of State Lands. Many years ago the DHES delegated that responsibility to the DSL. He said they were concerned that if that exemption was lost they may have to retroactively permit facilities that have been operating for many years. That exemption works very well and should be continued.

**Larry Brown, representing the Agricultural Preservation Association,** said the legislation is necessary because it

tightens up the issues that involve agriculture in regard to groundwater and storm permitting. On Page 2, Lines 8-9 are specific references to agriculture irrigation and storm water disposal.

**Mike Murphy, representing the Montana Water Resources Association,** said they wish to go on record to support SB 362.

**John Bloomquist, representing the Montana Stockgrowers Association,** said they support the legislation.

**Steve Pilcher, Administrator, Water Quality Division, DHES,** said they support SB 362. There were comments by some that testified about some activities exempted from permitting. In 1982 when the decision was made to exempt some activities, it was made because they didn't have the resources to do the job that needed to be done and they recognized that other agencies had similar permitting reviews. They are still not in a position to do all that permitting. SB 362 will institutionalize the practice of agencies other than the DHES permitting discharges to state waters. Currently DHES charges fees for processing and reviews of permitting. If another agency does that review they may not have access to that funding source. Other agencies may not have the statutory authority and the technical expertise necessary to provide consistent statewide control of water polluting activities as required under the Montana Water Quality Act. SB 362 would give them an opportunity to live up to that expectation. There is a concern that the bill needs to amend another section of the Montana Water Quality Act, and that is 75-5-605 which provides that it is unlawful to construct or operate a disposal system that discharges to any state waters without a permit from the DHES. He said that needs to be addressed.

**Mr. Pilcher** said the department supports the bill, but the following exclusions that are listed in the bill should be deleted in order to allow the department to require permits when they feel the activity warrants control: 1) discharges under the underground injection control program with the exception of Class 2 wells; they would be willing to allow the Oil and Gas Commission to permit oil and gas wells; 2) subsurface disposal systems reviewed by the department under Title 50, Chapters 50 through 52; 3) existing treatments works reviewed and approved by the department prior to October 29, 1982; 4) public water supply, distribution, or treatment facilities approved by the department pursuant to Title 75, Chapter 6; and 5) provisions of the Montana Major Facility Siting Act, Title 75, Chapter 20. All of the other permit exemptions are satisfactory to them.

**Russ Ritter, representing the Montana Resources, Butte,** said they support SB 362 for the reasons previously stated.

**Opponents' Testimony:**

**Jim Jenson, Executive Director of the Montana Environmental Information Center,** said the Legislative Auditor analyzed the Water Quality Bureau and the Hard Rock Bureau. They discovered that the Hard Rock Bureau in the DSL fails to adequately and properly enforce water quality under the surface and groundwater requirements imposed under their permitting authority. An example is the Zortman, Landusky Mine that is owned by Pegasus, where the water quality was so bad that the Water Quality Bureau of the DHES had to bring suit. Aside from the fact the Water Quality Division is the proper authority to protect water, they do not have sufficient funds to comply with the recommendations of the audit. The Legislature has eliminated the Governor's request for additional staff to comply with the directives of the audit. The DSL requested from the same committee additional staff and that did not happen either. The DSL doesn't have enough staff to do that work. The committee should realize that the bill comes with a price tag and that should be considered. He urged the committee to leave the Metal Mine Reclamation Act authority with the DHES because of of DSL's inability to protect state waters, and give DHES the resources to do the job.

**Richard Parks, representing the Fishermen Outfitters and the Northern Plains Resource Council,** said they appear in opposition to the bill. The bill does not relieve permittees from complying with the Water Quality Act. It removes the Water Quality Division from the permitting process. A permittee should be able to tell how to comply with the Water Quality Act. How can a permittee be sure that he is not being set up for failure because he doesn't have the relevant information in order to comply with the Act. The permitting process belongs with the Water Quality Division. He said it is a bad bill that should be killed.

**Joe Gutkoski, President, Madison Gallatin Alliance,** said they have a pollution site in Bozeman called the Bozeman Solvent Site. The pollution comes from oil and gas stations, auto repair agencies, auto dealerships, and dry cleaning businesses. They have polluted the wells extending north including some wells in trailer courts. The plume is still running down the hill and a voluntary committee is looking into that and the state has done a lot of work for them. If the bill passes that will be the last of the state involvement.

**Brian Kuehl, representing the Greater Yellowstone Coalition,** said he wondered if they were really talking about transferring groundwater control in the Water Quality Division to the Department of State Lands or other departments. He said the issue is about whether or not they want to protect our water quality from activities such as major mines. The Hard Rock Bureau was not enforcing water quality laws and they don't have the expertise. Is the mining industry arguing for the bill because they can pollute more under the bill? Do the constituents want to worry about what is coming up in their

wells, and do they want mining exempt from groundwater control? If the committee approves of that then the committee should pass the bill. But Montanans do not want polluted water and the bill should be rejected.

**Alan Rollo, representing the Montana Wildlife Federation,** said the state should be looking at prevention instead of costly clean-up in several areas that were exempted in the bill. There is more and more groundwater pollution where people were required to boil their drinking water. The bill would increase the contamination of water. He requested that the committee table SB 362.

**Kenneth Knapp, representing the Montana River Action Network,** said about a month ago he attended a meeting in Butte on mine permitting. There were 150 people present representing the mining industry. One of them shared with them that the mining permitting process has become so complex that it is not cost effective anymore. The Hard Rock Mining people said there were only two things that could be done: change the rules or take it out of the United States where rules don't apply. There needs to be a role model for other developing countries in the world. He asked the committee to table the bill.

**Jim Barrett, Cooke City,** said he has lived in Montana for 22 years and watched a level of growth occur in the state. He said he lived in Detroit, Michigan on the edge of town where there were cows mooing. Today, the edge of town cannot be found. One day we will be sorry that we did not take the steps necessary to make sure that does not happen here. He recommends maintaining the ability for the department to require permits for any kind of water quality degradation. He opposes SB 362.

**Paul Roos, Helena,** said he didn't understand the logic in telling the DHES that they were to be concerned about the surface water but not the groundwater. Every winter just before the Blackfoot River reaches Lincoln it goes dry. Below Lincoln, within a quarter of a mile it is flowing again. The proposed 7 Up Pete Joint Venture is about 7 miles above Lincoln. At the headwaters of the Blackfoot and the Landers Fork they are proposing a pit 1300 feet down which is approximately 1,000 feet below the level of the river and the Water Quality Division has nothing to say about what might happen to the groundwater. That doesn't make sense and he opposes the bill.

#### Questions From Committee Members and Responses:

**SEN. WELDON** said Page 2, Line 14 says: "existing treatment works reviewed and approved by the department prior to October 29, 1982..." He asked what was so special about that date. **Mr. Pilcher** said that was the date on which the original groundwater rules were promulgated by the DHES.

**SEN. KEATING** asked **Mr. Kuehl** if he understood that all the things that the DHES is not going to do under the bill, they have not been doing before. **Mr. Kuehl** said he wasn't speaking on behalf of all the opponents because they represent a lot of different interests. The way he understood it, there was a water quality audit that said the Water Quality Division was not enforcing the law. They should be regulating and protecting groundwater, but they have been exempting certain activities such as mines. The audit says they should go back to how it was meant to be and eliminate the exemptions. He said that would clarify the responsibilities of the department.

**SEN. KEATING** asked **Ms. Abercrombie** if the legislative auditor said that the department was not doing their duties. He said he heard her say that the exempted permits were obtained in other departments, so the DHES said there is no need for duplication of permitting. He asked if there was anything in the audit that said that the department was not doing what it was supposed to do regarding protecting the water quality of the state. **Ms. Abercrombie** responded that it was a very broad audit. The section **SEN. KEATING** was talking about was merely a procedural issue. The audit only pointed out that there seemed to be enforcement problems.

**SEN. CRISMORE** said that **Mr. Jensen** made reference to a mine that had problems and a suit was filed by the DHES because things hadn't been done properly. He asked **Mr. Fitzpatrick** to respond. **Mr. Fitzpatrick** said **Mr. Jensen** was right that the DHES had filed suit against the Zortman/Landusky Mine because of allegations of water quality violations. That suit has not been adjudicated and they have not been convicted of any wrong-doing. He said **Mr. Jensen** also indicated that the DSL was not doing its job and he emphatically disagreed with that. It was the DSL in conjunction with the BLM who made the first effort to have a new reclamation plan developed to correct the problems. The DHES was supposed to participate in that process, but they didn't. The DSL has taken the lead in Zortman/Landusky to correct water quality problems. The DHES has basically been absent from the process except for their law suit.

**CHAIR. GROSFIELD** said the bill is almost verbatim with the rules that were in the rule book. There were two different alternatives suggested in the audit. Either specifically provide for the exclusions since they were not currently provided for in the statutes, or if the legislature does not authorize them in statute, the exclusions in the rules should be repealed. Those were the audit recommendations. This bill essentially codifies those rules into the statutes. He said that the department would like to exclude from the bill on page 2, part of subsection (a), (i), and all of currently (j), (k), and (n). He said he had asked the department about the number of permits that may be involved if the exclusions were not provided for. He said his notes said in (c) there may be thousands of them, in (d) there may be just a few, in (e) there would be several thousand, and in



(h) there would be tens of thousands. He said that was probably the reason for the bill, because the DHES could not possibly deal with thousands and thousands of additional permits.

**John Arrigo, Water Quality Bureau, DHES,** said they were concerned about the class 5 injection wells. There are thousands of those in the Missoula Valley area where storm water from the streets soaks into the groundwater. It is on page 2 under (a) where it says: "discharges or activities regulated under the federal underground injection control program..." There are 5 types of injection wells. Class 2 are the oil field injections that they do not want to regulate. They would like to retain the ability to regulate the other injection wells. Class 5 were the drain wells that serve automotive shops and those type of businesses. There are thousands of those and the department would have to prioritize which ones would be permitted. Under (i) "subsurface disposal systems reviewed and approved by the department pursuant to Title 50, chapters 50 through 52...", those are community drain fields for trailer courts and campgrounds, and there are hundreds of those. Under (j) "the existing treatment works reviewed and approved by the department prior to October 29, 1982...", those would be sewage lagoons that do not discharge directly to streams but may leak into the groundwater. Under (k) "public water supply, distribution, or treatment facilities approved by the department pursuant to Title 75, chapter 6...", those would be important to permit because in treating water for drinking, often the sediments are disposed of next to the plant, and those are not regulated and could go into a stream. Under "(n) projects reviewed under the provisions of the Montana Major Facility Siting Act, Title 75, chapter 20.", there may be one every 5 years.

**SEN. BROOKE** asked **Mr. Arrigo**, under (a) who permits those facilities now. He replied in waste water disposal systems, the department approves and reviews the design. After that is constructed the department doesn't get involved. In the underground injection control program, the EPA has regulated the oil and gas, class 2 disposal wells. The EPA regulates some of the class 5 disposals, but they focus on wells from industry.

**SEN. BROOKE** said under (m) it was brought up that it should also be part of the regulations or the permitting activities of the department. **Mr. Arrigo** responded that the department works with DSL in the review of mining operations. They would retain their permitting authority for discharges to surface water. That cannot be delegated to the DSL.

**Closing by Sponsor:**

**SEN. TVEIT** said in response to some of the opponents, on Page 2, Line 23 it says: "Notwithstanding the exclusions set forth in subsection (5), any excluded source that the department determines may be causing or is likely to cause violations of ground water quality standards may be required to submit

monitoring information pursuant to 75-5-506." He said 75-5-506 says: "in order to carry out this chapter and effectively monitor discharge from sewage and industrial waste and other waste to the state waters, the department may require the owner, operator if any point source, or the owner, operator discharging into municipal waste sewage system..." He said SB 362 does not create or allow anything new from the current practices. He asked the committee to favorably consider SB 362.

{Tape: 3; Side: B}

{Comments: CHAIR. GROSFIELD relinquished the chair. to VICE CHAIRMAN, LARRY TVEIT, to present SB 371}

#### HEARING ON SB 371

##### Opening Statement by Sponsor:

SEN. LORENTS GROSFIELD, SD 13, Big Timber, said SB 371 defines outstanding resource waters. During the last interim when the nondegradation rules were developed, the Board of Health came up with rules authorizing them to designate outstanding resource waters, and there was some criticism that regarding the adopting of that rule. The major part of the controversy was that the statutes did not authorize the board to do that. They acted beyond the statutory authority by granting themselves the power to designate outstanding resource waters. They did that based upon the EPA rules under the Clean Water Act. However, there was some question as to whether the EPA had that authority in their rule-making. The concept of outstanding resource waters is not specifically mentioned in the federal Clean Water Act either.

SEN. GROSFIELD said after that happened he submitted a bill draft request to clarify that there was authority to do that. The rule said that they may designate outstanding resource waters but gave few guidelines as to how they may do that. It seemed to make sense to have some procedure or criteria in place, and SB 371 tries to do that. Outstanding resource waters is a tough issue that other states have dealt with. Some of the other states are Wisconsin, California, and others. In Austin, Texas there were people interested in designating the stream that flows through the center of town. There were a lot of hearings, it got very controversial and in the end the board backed-off and didn't designate anything in Texas as of {The effective date of this act}.

SEN. GROSFIELD said on Page 2, Lines 28-30, it states: "Outstanding resource waters" means: state surface waters located in areas designated as national parks or national wilderness areas". He said the reason for making it "as of the effective date of this act: is that we know what we have now and he felt comfortable with designating surface waters in currently designated national parks and wilderness ares. However, future

parks or wilderness areas might involve waters that were not appropriate to be designated. For example, some people are contemplating asking Congress to make Virginia City a National Park. Page 3, Line 1-2 says: "other surface waters or ground waters classified by the board under the provisions of (section 3) and approved by the legislature." He said the reason for this provision is that he does not want to make it easy to designate outstanding resource waters, because this designation significantly limits activities that can take place on the designated drainage. On Page 5, Lines 4-6 it says: "A person may petition the board for rulemaking to classify waters as outstanding resource waters. The board shall initially review a petition against the criteria identified in subsection (3)(c) to determine whether the petition contained sufficient credible information for the board to accept the petition." On Page 5, Lines 11-12 it says: "The board may not adopt a rule classifying state waters as outstanding resource waters until it accepts a petition and finds that, based on a preponderance of the evidence:..." There are several steps to go through to identify whether or not they can be designated as outstanding resource waters. He said an EIS may be required if there could be impacts to social or economic values involved. Waters may not be issued a designation if it would cause significant adverse environmental, social, or economic impacts. It is very important that should be analyzed before they are designated as outstanding resource waters.

#### Proponents' Testimony:

**Peggy Trenk, representing the Western Environmental Trade Association,** said they were in support of SB 371, as the bill addresses a couple of concerns with the degradation rules that were adopted in July in regard to the outstanding resource waters. The bill clarifies that the Board of Health, with the approval of the legislature, does have the authority to designate outstanding resource waters. There were some different opinions that probably could have led to litigation. The bill provides a clear process for the board to use in approving outstanding resource waters. Because of the potential impact on outstanding resource water's neighbors, they have to be given full knowledge of those impacts. The bill provides a good road map in making sure that occurs. They encourage the committee's support of SB 371.

**Don Allen, representing Montana Wood Products Association,** said they support SB 371. There were a lot of differences of opinion as to whether or not the board had the authority to adopt outstanding resource waters in its rules. The bill clarifies that and authorizes designations and they agree with the legislative intent where it says: "It is the further intent of the legislature that surface and ground water in Montana be designated as outstanding resource waters only if there is no other reasonable means of protecting the water." There was a concern that some rivers or streams would be designated as

outstanding resource waters and would have a tremendous negative impact on the traditional uses that were important to the economy of the state.

**Joe Gutkoski, President, Madison Gallatin Alliance,** said they agree with the intent of the outstanding resource waters. The federal government has a system designating wild, scenic, and recreational rivers, and it is only right for the state to designate outstanding resource rivers.

**Richard Parks, representing the Northern Plains Resource Council,** said they were cautiously supporting SB 371. At the top of Page 5, the first two lines appear to say the same thing. However they address two different sections of the Water Quality Act. On Page 6, Line 14 it says: "The board may not postpone or deny an application for an authorization to degrade state waters under 75-3-303 pending:..." If there is a potential for outstanding resource waters, an application is presented to the board and the board has accepted the application, and is in the process of dealing with it as if it might be an outstanding resource water. If the board then finds that it is an outstanding resource water and sends it to the legislature for approval but the legislature denies it, all of the good faith effort that has been put into this by the people that initiated the process, is now wasted because anyone can petition to degrade and short stop the whole process. The bill would have much more integrity if the words "or denied" were taken out of it. Don't compel the board to approve a degradation application when we have a situation where we think it will be designated as outstanding resource waters.

**John Bloomquist, representing the Montana Stockgrowers Association,** said they raised the issue in the nondegradation process regarding the authority of the board to grant ORW's. They are particularly important because under the rules there is no degradation allowed in an ORW. They didn't believe the rules as they were promulgated by the board were very clear. The positive aspect of the bill is identifying the authority and the clear definition of criteria to be considered for designating ORW's. It is very important to articulate the process for designation of ORW's. It is not an easy process and shouldn't be because we are talking about no degradation, no effect, no lowering of a parameter and that is a very high test and has very serious ramifications. He was concerned with the definitions on Page 2, Lines 28-30 that says: "state surface waters located in areas designated as national parks or national wilderness areas as of the effective date of this act..." **Mr. Bloomquist** said he thought it should say: "within the boundaries of those areas." The other concern was on Page 9, New Section 6, Nonsignificant activities, regarding subsection (2)(a) that says: "activities that are nonpoint sources of pollution when reasonable land, soil, and water conservation practices are applied..."

**Mike Murphy, representing the Montana Water Resources Association,** said they support SB 371. He said they had a

concern with existing facilities such as dams, irrigation, reservoirs, etc. located within the existing wilderness areas for potential new outstanding resource designations. There probably should be an amendment to Section 6, Nonsignificant activities, so there would be no question as to the ability to provide for activities necessary to maintain and operate those existing facilities. Those activities are already strictly controlled through the federal Wilderness Act.

**Larry Brown, representing the Agricultural Preservation Association**, said they were proponents to SB 371, but concur with **Mr. Murphy's** concerns. He commended **SEN. GROSFIELD** on the work he did in putting the package together for SB 371.

**John Fitzpatrick, Pegasus Gold Corporation**, said he is in support of the bill, but requested an amendment to Section 6, Nonsignificant activities. That section identifies a series of nonsignificant activities for nondegradation purposes, such as exploration for coal and uranium, and oil and gas drilling. They would like to request that metallic and nonmetallic mineral exploration performed in accordance with Title 82, Chapter 2-4 also be added to the legislation.

**John Youngberg, representing the Montana Farm Bureau Federation**, said they have all realized there were outstanding resource waters in Montana. During the rule-making process there were a number of concerns that were addressed. **SEN. GROSFIELD'S** bill has addressed those concerns with the exceptions of the concerns raised by **Mr. Murphy** about the wilderness areas. There were a number of irrigation projects in the Bitterroot that come out of dams located in the wilderness areas, and also concerns about the waters within those areas. They urge the committee's support of the bill and to consider those concerns.

**Gail Abercrombie, Executive Director, Montana Petroleum Association**, said the procedures for designating outstanding resource waters in the bill are very clear. It narrows the procedures on the federal level of setting protective classifications for land and waters that an agency approves and recommends a protective status.

**Opponents' Testimony:** None

**Questions From Committee Members and Responses:**

**SEN. BROOKE** said there was a concern about waters located within National Parks and National Wilderness Areas as opposed to boundary waters. In Glacier Park the boundary is the North Fork of the Flathead River and the Divide Creek on the eastern boundary. She asked **SEN. GROSFIELD** if those waters would be within the definition. He said the bill says "in the area designated", and an area may be larger than the actual

designation. As far as the boundary waters such as Glacier Park and also Yellowstone, he would have to think about that.

**SEN. KEATING** asked if the Yellowstone River that flows out of the Park would be considered an outstanding resource water. **SEN. GROSFIELD** replied yes, there are a number of streams that are within the boundary of Montana, but are inside national parks.

**SEN. KEATING** said the Yellowstone River is in the park and also in Montana. He asked what the bill did concerning that water.

**SEN. GROSFIELD** responded that was designated as an outstanding resource water and the state could not grant an authorization to degrade. He supposed that perhaps the Park Service could develop a campground site and that would be nonsignificant for the outstanding resource waters. **SEN. KEATING** said there was mining at Jardine that is not too far from the Yellowstone River. Would a permit for a mining discharge that may get to a river be a potential under the bill. He asked if the bill would say that the state could not issue a permit under any circumstances. **SEN. GROSFIELD** said no, he didn't think so, in the example he gave, in order for the state to grant the mine at Jardine a discharge permit, it would have to meet the water quality standards of the Yellowstone River. If you were talking about the groundwater, it would have to be nonsignificant by the time it reached the surface water.

**SEN. TVEIT** asked what happens to the waters that are designated inside a park, when they leave the park, or a river or stream that runs into a park. How will the bill affect farmers and ranchers upstream from the parks when there has to be pristine water going into the parks. **SEN. GROSFIELD** said Yellowstone and Glacier Park were headwater areas. There was very little water that flows into those parks, so there is not anything upstream. He said the bill only deals with parks and wilderness areas as of the effective date of the act. There are some proposals to make some downstream areas in eastern Montana on the Missouri wilderness, but those would not be outstanding resource waters unless they went through the process of board approval. There could be a lot of issues that would have to be addressed before they could be designated as outstanding resource waters.

**SEN. KEATING** said Lake Abundance is below the Crown Butte Mine near Cooke City and outside the wilderness area. He said that Lake Abundance was the headwaters to the Stillwater River that runs through part of the Beartooth Wilderness area on its way out. There are mining operations outside the wilderness area and above the headwaters that run into the wilderness where these waters would then be designated as outstanding resource waters under SB 371. He asked if someone could say that Crown Butte can't get a permit because there is an opportunity that some of the run-off could degrade the Stillwater River as it flows into wilderness area. **SEN. GROSFIELD** said in the area around Crown Butte there are three drainages and each either flow into a wilderness area or a national park. The Crown Butte area goes

into the Absaroka Beartooth Wilderness to the west of Cooke City. He said the West Fork of the Clarks Fork, as it enters the wilderness area, is classified as B (1) water. The current water quality standards for B (1) at that point would have to be met with or without SB 371.

Closing by Sponsor:

SEN. GROSFIELD said they are trying to clarify and avoid litigation over whether or not the board has the authority and whether or not they can designate certain waters. The bill clarifies that. There is some concern about the maintenance of dams in wilderness areas and he thought that was taken care of in the bill, but would look into that further. The issue about the board may not deny an authorization to degrade pending board action or legislative approval; the reason that is in the bill is to avoid someone using the bill as a means to stop projects. That is not the intent of the bill. The purpose of the bill is to designate outstanding resource waters where they are appropriate.

*{Comments: CHAIR GROSFIELD RESUMED THE CHAIR}*

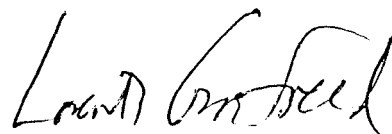
EXECUTIVE ACTION ON SB 234

CHAIR. GROSFIELD announced that he would like to appoint a bipartisan subcommittee to review the technical amendments to SB 234. He said only the technical amendments would be dealt with, and he didn't think they would be controversial once they were understood. He appointed SEN. WELDON, SEN. TVEIT, SEN. CHRISTIAENS and himself to that subcommittee.

*{Comments: the meeting was recorded on 3 tapes, 60 minutes each side.}*

ADJOURNMENT

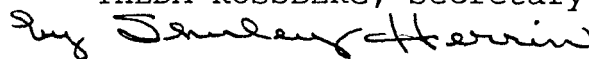
Adjournment: 9:15 PM



LORENTS GROSFIELD, Chairman



THEDA ROSSBERG, Secretary



LG/TR





SENATE BILL 346

TESTIMONY  
DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

Steven L. Pilcher, Administrator  
Water Quality Division

The Department of Health and Environmental Sciences has requested consideration of SB 346 in an attempt to deal with a problem that we currently face in administering the Montana Water Quality Act.

The Water Quality Act requires the Board of Health and Environmental Sciences to classify all waters of the State according to present and future beneficial uses. When Montana streams were classified in the mid 1960s, available water quality data was quite limited. Localized water quality problems such as those created by past mining activities were not recognized. We are now finding a number of stream segments that do not meet the assigned classification and do not support the designated beneficial uses.

A good example of this would be the Upper Blackfoot River near Lincoln where historic mining activities in the area of the Mikehorse, Anaconda, and Paymaster Mines have seriously impacted the quality of the Blackfoot River. That upper segment is not of the same quality as the lower river but has been given the same classification.

Senate Bill 346 represents a realistic way to address these water quality problems. Currently, the Board can reclassify and lower the classification of stream segments upon the finding that the current classification is higher than actual water quality that existed at the time of classification. Senate Bill 346 would allow the Board to change the standard but instead of writing off a stream with poor water quality it would establish a temporary standard for a stream segment. Such temporary classification would require the development of an implementation plan that ensures that higher water quality standards are met as soon as reasonably practical. In no case shall the temporary standard extend more than twenty years.

The Department, through its permitting responsibilities, would ensure the conditions and limitations designed to achieve compliance with the plan are enforced.

This bill, in no way allows anyone to degrade State waters. It is limited to those stream segments that suffer from past activities and provides a mechanism to restore those waters to better quality. We hope you will give favorable consideration to this request.

THANK YOU!

DATE 2-13-95

BILL NO. SB-346

SB 346, TEMPORARY WATER QUALITY STANDARDS  
FEBRUARY 13, 1995, HEARING BEFORE (S) NAT.RES. COMM.  
COMMENTS OF SIERRA CLUB, MONTANA CHAPTER

The goal behind SB 346 is a worthy one: to improve water quality limited segments of Montana surface and ground waters. A water quality limited segment of water is one in which all water quality standards are not currently being attained. The purpose of the bill is to establish temporary water quality standards that are more stringent on a parameter-by-parameter basis than existing water quality standards for a particular water body whose designated beneficial uses are not being met. Through implementation of these temporary standards in pollutant discharge permits, the State's goal to achieve all beneficial designated uses (e.g., swimming, fishing, drinking water, etc.) should be realized. See Bill, Section 3(1) at 3 lines 23 through 28.\*

Under the bill, the Board may on its own, or upon recommendation of DHES, or upon a petition for rulemaking by any person, including a permit applicant or permittee, temporarily modify a water quality standard on a parameter-by-parameter basis in those instances in which substantive information indicates that a water body or segment thereof is not supporting its designated uses. See id. Within this mechanism lies the flaw of this bill.

To begin, the federal Clean Water Act requires Montana proactively to identify all water quality limited segments of water bodies due to both point source and non-point source pollution. 33 U.S.C. § 1313(d) and 40 C.F.R. § 130.1 et seq. After performing this analysis, the State must determine a "total maximum daily load" ("TMDL") of pollutants that may be discharged from point sources into such segments in order to allow all designated uses to be achieved. All permits thereafter issued must reflect the restricted amount of pollutants allowed to be discharged in order to attain designated uses. If the TMDL for a pollutant (i.e., a parameter) is less than the amount of the pollutant currently being discharged from point sources (which necessarily will be the case), current permittees must reduce the amounts of the pollutant discharged and no new point sources of that pollutant may be permitted. In this manner, the goal of the Clean Water Act to restore and maintain the chemical, physical

---

\* There may be cases in which nonpoint sources of pollution, for instance from agricultural runoff, may be the most significant sources of pollution in a stream segment. In these situations, it may not be possible to achieve all water quality standards exclusively through more stringent controls on point source pollution. Section 319 of the Clean Water Act provides federal dollars to Montana to design and implement nonpoint source pollution programs to alleviate this kind of problem.

and biological integrity of Montana's waters is achieved. See 33 U.S.C. § 1251.

Under SB 346, the State's response to water quality limited stream segments would be reactive, and also would be entirely discretionary with the Board. Even in the situation where a person petitioned for temporary standards, the Board would be within the bounds of its authority to deny the petition, as long as its decision to do so was reasonable. In this manner the bill is in clear conflict with federal law.

In addition, the federal Act does not allow the State to place the burden on the public to identify water quality limited segments or to propose the rules that would restrict pollutant discharges to allow all designated uses to be achieved. Under SB 346, the State acting through the Board or DHES, may propose temporary water quality standards to improve polluted stream segments, but the State does not necessarily have to do so. This provision is flatly inconsistent with the Clean Water Act.

Further, any other person wishing to have temporary standards promulgated must submit a petition for rulemaking supporting the request. A petition for rulemaking requires the petitioner to submit a detailed statement of reasons supporting the need for a new rule and to provide the proposed rules that the petitioner desires to have promulgated. Speaking as one who has prepared petitions for rulemaking, this is a heavy burden indeed. While it may be entirely appropriate and desirable for existing and potential permittees to be required to assist, or even fund, the State in its duty to promulgate TMDL's (or, under this bill, temporary standards), it is completely unreasonable to expect a citizen petitioner to conduct the water quality analyses and put forward the highly technical information necessary to support the basis of a TMDL. More importantly, however, the bill's purported attempt to shift this burden from the State to the public is contrary to explicit federal requirements set forth in the Clean Water Act.

Enacting a bill whose ostensible purpose is to fulfill federal requirements, but whose provisions directly contravene federal law would be bad policy for Montana. The bill, if it becomes State law, will be subject to U.S.E.P.A. review. Most assuredly, the EPA would veto the State's attempt to circumvent the requisite TMDL process. But even if EPA did not do so, citizens may legally challenge the EPA's failure to carry out its mandatory duty to ensure that the State's water quality laws fulfill the letter and spirit of the federal Clean Water Act. The upshot would be that the State may lose primacy to carry out Clean Water Act programs.

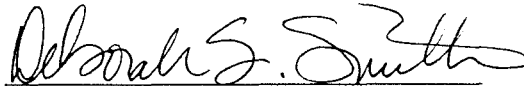
A good alternative to this bill would be legislation requiring permittees and permit applicants to fund the State's

ADIT NO. 2DATE 2-13-95BILL NO. SB-346

TMDL analyses. Such analyses, however, may not be confined only to water quality limited segments of water bodies where point source discharges exist or are proposed. Under the Clean Water Act, the State must analyze all water quality limited segments and come up with a plan to achieve all designated uses in those segments through permit discharge requirements. The logical starting point is dirty stream segments where existing point source dischargers are located, or alternatively where an applicant wishes to begin a new discharge (e.g., Daisy and Fisher Creeks at the New World mine site). In this way, the segments with existing or potential dischargers are analyzed and cleaned up first.

We request the Committee to table this bill as written, or to amend it to direct compliance with the TMDL provisions of the Clean Water Act.

DATED: February 15, 1995



Deborah S. Smith

FOR SIERRA CLUB, MONTANA CHAPTER

# MRAN

MONTANA • RIVER • ACTION • NETWORK

CLIMATE NATURAL RESOURCES

PERMIT NO. 3

DATE 2-13-95

BILL NO. SB-346

February 13, 1995

Senators Swysgood, Beck, Tweit, Forrester and Grosfield  
Montana State Legislature  
Helena, Montana 59601

SB: 330, 371, 331, 362 and 346

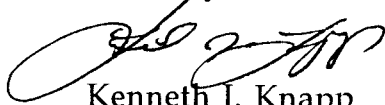
The Montana River Action Network, its members and supporters, statewide, oppose the passage of these bills and wish to express our views through this letter.

These bills attempt to lower water quality standards and threaten water quality throughout Montana. The water resources of this great state belong to all the people and we believe the people of Montana deserve the highest quality water available. In the spirit and intent of the Federal Clean Water Act, we should be improving water quality, not degrading it in any way.

These bills are a threat to not only wildlife and fisheries, but pose an imminent and future threat to public health and welfare.

MRAN would ask the legislators in the Senate and House to vote no on each of these bills and vote for clean water for our children and their children to come.

Sincerely,



Kenneth J. Knapp  
Executive Director

Comments of the Montana Council of Trout Unlimited SB-330

to  
Senate Natural Resources Committee, Montana Legislature  
regarding  
SB 330 and SB 331  
submitted by

Bruce Farling, Montana Council of Trout Unlimited  
February 13, 1995

Both SB 330 and 331 stray badly from what most Montanans expect for protection of water quality. Both bills would result in poorer water quality, and in turn harm the state's sportfishing industry, estimated to be worth \$250 million to the state annually.

SB 331

Statement of Intent. We agree decisions should be made using sound scientific information and never on the basis of conjecture. However, because it is impractical to always guarantee 100 percent scientific certainty, at times some decisions have to be based on scientifically acceptable, calculable estimates. We recommend the standard of not basing a decision on projections and conjecture also be applied to the information that shows that economic and social benefits outweigh the values of protecting high quality water.

Section 1. It's bad policy and science to codify water quality standards. Currently they have to be reviewed by the board every three years. That allows new scientific information to be factored in to standards changes. By establishing standards under statute, instead of by rule with board approval, we are taking science out of the process for setting standards. We will then have to ask nonscientists, the legislature, to change standards in the political arena.

Section 2. It's bad science to limit water quality analysis only to dissolved constituents. Some pollutants can be harmful when in a non-dissolved state, and are best measured in surface water with total recoverable methods. For example, metals ions can attach to sediment particles, where they aren't detected by dissolved methods. These ions can be ingested by fish, insects or humans and then metabolized into forms that are harmful. This is a serious problem in mining polluted streams, such as the upper Clark Fork.

Section 2. Any adoption of standards that increases calculable risk of cancer should be done by the board with public involvement. This is too important an issue to be done in the frenzied pace of the Legislature.

Section 3. Rules already allow for the establishment of site specific standards.

Section 4. The change in the definition of degradation and high quality waters means that most streams in the state could be degraded without a nondegradation review. We don't believe that's what the Montana public wants. The current definition, which was changed by the last legislature with the approval of industry, should remain.

Section 4. The proposed changes for "industrial and other wastes" means there would be no discharge permits for mining tailings impoundments or cyanide heap-leaches. This would result in no treatment of discharges and would ensure water quality at active and proposed mines would harm popular recreational waters such as the Blackfoot River and tributaries of the upper Yellowstone, harming local tourist and sportfish economies. We don't believe that's what Montanans want.

Section 4. The proposal to exempt ponds and lagoons from being classified as waters of the state could conflict with water rights. For example, this could mean the water in the Warm Springs Ponds on the Upper Clark Fork is not open for appropriation, which would upset a lot of ranchers downstream. This exemption might also clash with the Montana Constitution's definition of state waters.

Section 7. The term intermittent stream should be dropped. Many intermittent streams support fisheries part of the year.

Section 7. The reference to "cost effective and economical" should be dropped here and elsewhere in the statute. This qualifier guarantees EPA will take over Montana's discharge permit system because it says if a discharger can't afford pollution technology then he can violate standards. Water quality standards, by law, are designed to protect public health and the environment. It's the responsibility of the discharger to make his operation comply. He has an obligation to pay for practical, accepted pollution-control technology.

Section 7. Reviewing of Montana's stream classifications at least every three years will be a prohibitively expensive as well as unnecessary endeavor. How will it be paid for?

Section 8. What quality of "information" will trigger a classification review? This provision could lead to an expensive morass for the state.

Section 10. The proposed definition of natural means that any stream not subject to a nondegradation review, which under this statute would be very few, could be degraded down to their 1971 qualities. That means the upper Clark Fork could be polluted so that it would have very little aquatic life. This definition would undermine the natural resources damage claim the State of Montana has filed against ARCO, thereby squandering millions of dollars invested in science and legal resources. It would also mean Montana would not be able to restore the Clark Fork.

Section 13. The time limit for permit review is extremely inadequate. It would force EPA to take over the program. The prohibition limiting the introduction of new concerns in the review process would mean the public could suffer if the state overlooked a critical element of the permit early in the review.



Because public health could then be compromised, this is an unacceptable change in the current law.

Section 15. For reasons of cost effectiveness, board meetings for contested case hearings should continue to be in Helena.

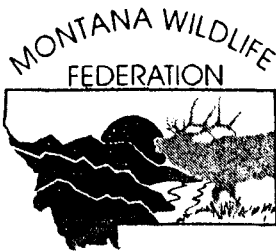
Section 17. Allowing violators to be given credit for mitigation done after they are caught and cited, removes the deterrence value of civil penalties. It would make it cheaper to pollute and risk being caught.

### SB 330

Section 9(b). This section must be stricken because many streams in Montana, including the Bitterroot, Clark Fork, Big Blackfoot, Lower Madison and others would not qualify as high quality waters. Therefore, they could be degraded without a nondegradation review. Coupled with SB 331, it would mean these streams could be legally degraded to levels found before pollution control was prevalent.

Water quality standards should not be established by statute. As stated above, it's more useful and scientifically responsible to establish them through the current 3-year review process of the Board of Health.

New Section under 75-5-303. By changing the word "alternative" to "modification," the legislature severely narrows the available options for reducing harmful pollution from new sources.



# MONTANA WILDLIFE FEDERATION

P.O. Box 1175,  
Helena, MT 59624

Ph. 406-449-7604  
Fax 406-449-8946

February 12, 1995

Senate Natural Resources Committee  
Helena, Montana

SENATE NATURAL RESOURCES  
BILL NO. 6  
DATE 2-13-95  
BILL NO. SB-230

Chairman Grosfield and Committee Members:

I am Alan Rollo from Great Falls with the Montana Wildlife Federation, requesting that you table Senate Bill 330.

As you are aware of, water quality standards in Montana can be very difficult to find consensus. The past two years of rule making showed just how contentious this issue is. I know that many people feel that our laws are too strict, preventing progress and prosperity but if this is the case, why are we seeing one of the strongest growths in the nation.

You are right if you feel that Montana citizens want businesses to grow but citizens also want the waters to be clean and healthy. So why make it easier for big businesses to pollute? This bill does just that by incorporating standards and definitions that can only mean a negative impact for all of us living here.

We need your help to keep Montana the "Last Best Place" that will bring prosperity while keeping our valuable waters protected. So please table SB 330 and let the new rules just recently put in place work.

Thank you.

Sincerely,

Alan Rollo  
Montana Wildlife Federation

From the desk of

**Kenneth J. Knapp**

NATURAL RESOURCES

EXHIBIT NO. 6 Member

DATE 2-13-95

FILE NO. SB-346 N.S.F.R.E

National Society of Fund  
Raising Executives

February 12, 1995

Senators Swysgood, Beck, Grosfield and Forrester  
Montana State Legislature  
1995 Session  
Helena, Montana 59601



Board of Directors  
Member, 1982-85

Gentleman,

I am writing this letter as a personal statement concerning the pending bills on Montana Water Quality to be heard in hearings tomorrow, February 13.

I am the Executive Director of the Montana River Action Network, a statewide river advocacy organization headquartered here in Helena. We represent constituents and members from all areas within Montana and a few from other western states. Our organization and its members are totally opposed to these bills that would reduce the water quality standards of this great state.

I would now like to state something more personal. I am a wildlife biologist. I attended Michigan State University and conducted wildlife research at the University of Oregon. I am a conservative Republican and former rancher from eastern Wyoming. I served on George Bush's National Campaign Committee and helped get John Turner of Wyoming elected to the Wyoming Senate two times where he served with distinction before being appointed Director of the U.S. Fish & Wildlife Service in Washington D.C.

I could cite a multitude of scientific arguments against provisions and stipulations within these bills, but I think I will leave that to my noted conservationist colleagues who have lived here far longer I have.

Rather I would tell you all that for almost twenty five years I have written for outdoor publications like Field & Stream, Outdoor Life, Petersen's Hunting, Sports Afield and 22 other similar publications. I have written about hunting, fishing, wildlife, great waters and wild places we like to call wilderness. I have authored books, written television documentaries for C.B.S. News on Grizzly Bears and hundreds of articles about places called Bob Marshall, Selway, Bitterroot, Scapegoat and the Gallatins. This land is like no other, abundant with wildlife, open places and clean water.

**P.O. Box 383 Helena, Montana 59624 (406) 458-5706**

Today, I am appalled and frightened by the proposed legislation that I have read in these four bills. Scientists, environmentalists, ranchers and natural resource managers, both State and Federal, have worked hard for the past fifty years to get our water quality laws where they are today. These bills, if passed and signed into law by Governor Rosciot would take us backward more than fifty years because the impacts on the water resources are greater today than they were then.

We cannot be short sighted in formulating water law. In the West, aquifers are going dry. New Mexico will soon be out of ground water. Some rivers that were once clear and abundant with wild fish are unusable by wildlife and humans because of salts, toxic waste, heavy metals and chronic de-watering.

If sell our water and quality to industry and special interests for the short term financial gain, then we have sold out our children and grandchildren who deserve to be left responsible choices that will come with future technologies and tomorrow's sciences.

This issue is not just about elk, deer, rainbow and cutthroat trout -- it is about human health. It is about the people of Montana and their right to have a drink of clean water, take their kids swimming and irrigate the land without fear of pollution.

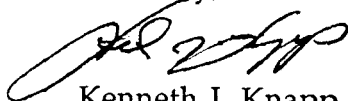
A minister once gave an invocation at the national convention of the Outdoor Writers Association of America. It went something like this:

Lord, thank you for the quaking Aspen, the rising trout and bugling bull elk, the snow capped peaks and lush mountain meadows..

But Lord, if I should ever think these things are mine, remind me Lord, that these are but your wondrous creations and I am but a steward of these gifts.

We must all be good stewards of the lands, wildlife & waters. I implore you to not pass these bills and strengthen the laws of Montana to provide the protection the land and waters so desperately need.

Sincerely,



Kenneth J. Knapp  
Outdoor Writer

Testimony of Nick Golder February 13, 1995 before  
the Senate Natural Resources Committee on SB 330 and SB 331

I'm Nick Golder. I ranch south of Forsyth and Forsyth is my address. I live near Colstrip. I first came there in 1947 so I've had a lot of first hand opportunity to learn the nuts and bolts of what happens when those people dig around in the aquifers that water my cattle. I have some workable ideas about how they can dig in the coal and water without permanently changing and contaminating wells and springs for myself and their other neighbors. I'm not a wild-eyed environmentalist. I think there are ways for them to handle their coal operations without ruining my water. I'm caught in a squeeze play between industry impacting my water, among other things, and the environmentalists who think my cows shouldn't eat grass, or belch, etc.

Many conservatives and Republicans feel like they have long been denied their rights as American citizens and are being oppressed by the heavy hand of government. Now, in the pell-mell haste to redirect the course of the state--and the nation-- there is much evidence they haven't noticed there is a baby in some of the bathwater they are throwing out. In the effort to "free up" the citizens' businesses in the state will the pendulum be allowed to swing so far to the other extreme that all the copper king and robber baron types will close in on us like packs of wolves?

For approximately the past year and a half I have served on a state ground-water committee. Everyone who might be interested was invited. We met together to agree on what general direction to take - and that took some doing to decide. Because of the complexities of the issues we broke into three subcommittees and intermittently worked together and separately during that time. We solicited input from all over the state. It was slow and ponderous, but we finally worked out some plans that a cross section of the state's people decided was workable and reasonable. We found we had so many thorny issues that we didn't get them ironed out in time to draft legislation for this session. But we did finally arrive at general consensus.

So,, with all that fresh in my mind, it seems a shame to see this legislature

steamroller through some things you simply don't have time and exposure to gauge the net effect of what is proposed in these bills. <sup>SB-330</sup>

There is a great hue and cry about practices that squander the taxpayers' money. There is a need to put an end to wasteful practices. But will we squander our natural resources, creating more and more superfund sites in the name of finances and jobs? How many more Berkeley pits do we need to generate?

Do the people of this committee and in this legislature have the courage and integrity to stand firm against, and make a statement to those who would generate an increasing legacy of superfund sites for our kids, meanwhile touting the jobs produced.

Ladies and gentlemen of this committee and of this legislature, I implore you to look carefully at the long term effects of what you do here. There is some bathwater to be thrown out, but there is a baby in some of it. There are environmental laws and regulations that were crafted because of those who abused the law. Getting rid of the law will invite worse abuse.



## MISSOULA CITY-COUNTY HEALTH DEPARTMENT

301 WEST ALDER ST  
MISSOULA MT 59802-4123

(406) 523-4755

SENATE NATURAL RESOURCES

CREDIT NO. 8

TESTIMONY CONCERNING SENATE BILL 331

DATE 2-13-95

BILL NO. SB-330 + 231

February 13, 1995

Senate Natural Resources Committee  
Senator Grosfield, Chairman  
Montana Legislature  
Helena MT 59620

Mr Chairman, members of the committee.

My name is Jim Carlson, Director of the Environmental Health  
Division, Missoula City-County Health Department.

I wish to oppose Senate Bill 331 for the following reasons:

Senate Bill 331 is a major restructuring of the State Clean Water  
Act.

-It weakens the criteria for public exposure to carcinogens to  
level much less stringent than most states.

-The changes in the definition of degradation would require a  
complete revision of the non-degradation rules, which are only  
a few months old, at considerable expense to the State of  
Montana.

-It would weaken the nitrate standard for non-degradation in  
groundwater at the drinking water standard. That means that  
it would be legal for a source to contaminate groundwater to  
the point that the Federal drinking water Standard would be  
violated. If that groundwater was used as a public drinking  
water supply, we would be required to shut down the drinking  
water supply due to violation of the public health standard.

The non-degradation requirements must serve to protect our  
groundwaters as a viable source of drinking water. In Missoula  
groundwater is our sole source of drinking water.

It is our understanding that there are a number of amendments  
proposed for this bill. We have not seen these amendments. We  
would request that the committee rehear the bill after these  
amendments have been made incorporated to ensure that the public  
has the opportunity to comment and help fine tune the bill before  
it is passed on to the Senate.

In summary, we stand in opposition to this bill which weakens the  
State Clean Water Act as to prevent adequate protection of public  
resources and public health.

10/25/93 15:00

202 280 5304

EPA/OST



Post-It™ brand fax transmittal memo 7671

# of pages 7

To: <i>Chuck Stilwell</i>	From: <i>Bill Skidmore</i>
Co.	Co.
Dept.	Phone #
Fax #	Fax #

EXHIBIT NO. 9  
 DATE 2-13-95  
 BILL NO. 50-33 13  
 10-26

OCT 1 1993

OFFICE OF  
WATERMEMORANDUM

**SUBJECT:** Office of Water Policy and Technical Guidance on Interpretation and Implementation of Aquatic Life Metals Criteria

**FROM:** Martha G. Prothro *Martha G. Prothro*  
 Acting Assistant Administrator for Water

**TO:** Water Management Division Directors  
 Environmental Services Division Directors  
 Regions I-X

Introduction

The implementation of metals criteria is complex due to the site-specific nature of metals toxicity. We have undertaken a number of activities to develop guidance in this area, notably the Interim Metals Guidance, published May 1992, and a public meeting of experts held in Annapolis, MD, in January 1993. This memorandum transmits Office of Water (OW) policy and guidance on the interpretation and implementation of aquatic life criteria for the management of metals and supplements my April 1, 1993, memorandum on the same subject. The issue covers a number of areas including the expression of aquatic life criteria: total maximum daily loads (TMDLs), permits, effluent monitoring, and compliance; and ambient monitoring. The memorandum covers each in turn. Attached to this policy memorandum are three guidance documents with additional technical details. They are: Guidance Document on Expression of Aquatic Life Criteria as Dissolved Criteria (Attachment #2), Guidance Document on Dynamic Modeling and Translators (Attachment #3), and Guidance Document on Monitoring (Attachment #4). These will be supplemented as additional data become available. (See the schedule in Attachment #1.)

Since metals toxicity is significantly affected by site-specific factors, it presents a number of programmatic challenges. Factors that must be considered in the management of metals in the aquatic environment include: toxicity specific to effluent chemistry; toxicity specific to ambient water chemistry; different patterns of toxicity for different metals; evolution of the state of the science of metals toxicity, fate, and transport; resource limitations for monitoring, analysis, implementation, and research functions; concerns regarding some of the analytical data currently on record due to possible sampling and analytical contamination; and lack of standardized protocols for clean and ultraclean metals analysis. The States have the key role in the risk management process of balancing these factors in the management of water programs. The site-specific nature of this issue could be perceived as requiring a permit-by-permit approach to implementation. However, we believe



10 25 93 15:01

0202 200 5394

EPA-POST

NATURAL RESOURCES 002

NO. 9  
DATE 2-12-95  
BILL NO. SP-331

2

that this guidance can be effectively implemented on a broader level, across any waters with roughly the same physical and chemical characteristics, and recommend that we work with the States with that perspective in mind.

### Expression of Aquatic Life Criteria

#### o Dissolved vs. Total Recoverable Metal

A major issue is whether, and how, to use dissolved metal concentrations ("dissolved metal") or total recoverable metal concentrations ("total recoverable metal") in setting State water quality standards. In the past, States have used both approaches when applying the same Environmental Protection Agency (EPA) criteria numbers. Some older criteria documents may have facilitated these different approaches to interpretation of the criteria because the documents were somewhat equivocal with regards to analytical methods. The May 1992 interim guidance continued the policy that either approach was acceptable.

It is now the policy of the Office of Water that the use of dissolved metal to set and measure compliance with water quality standards is the recommended approach, because dissolved metal more closely approximates the bioavailable fraction of metal in the water column than does total recoverable metal. This conclusion regarding metals bioavailability is supported by a majority of the scientific community within and outside the Agency. One reason is that a primary mechanism for water column toxicity is adsorption at the gill surface which requires metals to be in the dissolved form.

The position that the dissolved metals approach is more accurate has been questioned because it neglects the possible toxicity of particulate metal. It is true that some studies have indicated that particulate metals appear to contribute to the toxicity of metals, perhaps because of factors such as desorption of metals at the gill surface, but these same studies indicate the toxicity of particulate metal is substantially less than that of dissolved metal.

Furthermore, any error incurred from excluding the contribution of particulate metal will generally be compensated by other factors which make criteria conservative. For example, metals in toxicity tests are added as simple salts to relatively clean water. Due to the likely presence of a significant concentration of metals binding agents in many discharges and ambient waters, metals in toxicity tests would generally be expected to be more bioavailable than metals in discharges or in ambient waters.

If total recoverable metal is used for the purpose of water quality standards, compounding of factors due to the lower bioavailability of particulate metal and lower bioavailability of metals as they are discharged may result in a conservative water quality standard. The use of dissolved metal in water quality standards gives a more accurate result. However, the majority of the participants at the Annapolis meeting felt that total recoverable measurements in ambient water had some value, and that exceedences of criteria on a total recoverable basis were an indication that metal loadings could be a stress to the ecosystem, particularly in locations other than the water column.

10-25-93

10:01

202 200 5004

EPA-DOT

0003

SENATE NATURAL RESOURCES

EXHIBIT NO. 9

DATE 2-12-95

BILL NO. SB-221

The reasons for the potential consideration of total recoverable measurements include risk management considerations not covered by evaluation of water column toxicity. The ambient water quality criteria are neither designed nor intended to protect sediments, or to prevent effects due to food webs containing sediment dwelling organisms. A risk manager, however, may consider sediments and food chain effects and may decide to take a conservative approach for metals, considering that metals are very persistent chemicals. This conservative approach could include the use of total recoverable metal in water quality standards. However, since consideration of sediment impacts is not incorporated into the criteria methodology, the degree of conservatism inherent in the total recoverable approach is unknown. The uncertainty of metal impacts in sediments stem from the lack of sediment criteria and an imprecise understanding of the fate and transport of metals. EPA will continue to pursue research and other activities to close these knowledge gaps.

Until the scientific uncertainties are better resolved, a range of different risk management decisions can be justified. EPA recommends that State water quality standards be based on dissolved metal. (See the paragraph below and the attached guidance for technical details on developing dissolved criteria.) EPA will also approve a State risk management decision to adopt standards based on total recoverable metal, if those standards are otherwise approvable as a matter of law.

#### o Dissolved Criteria

In the toxicity tests used to develop EPA metals criteria for aquatic life, some fraction of the metal is dissolved while some fraction is bound to particulate matter. The present criteria were developed using total recoverable metal measurements or measures expected to give equivalent results in toxicity tests, and are articulated as total recoverable. Therefore, in order to express the EPA criteria as dissolved, a total recoverable to dissolved correction factor must be used. Attachment #2 provides guidance for calculating EPA dissolved criteria from the published total recoverable criteria. The data expressed as percentage metal dissolved are presented as recommended values and ranges. However, the choice within ranges is a State risk management decision. We have recently supplemented the data for copper and are proceeding to further supplement the data for copper and other metals. As testing is completed, we will make this information available and this is expected to reduce the magnitude of the ranges for some of the conversion factors provided. We also strongly encourage the application of dissolved criteria across a watershed or waterbody, as technically sound and the best use of resources.

#### o Site-Specific Criteria Modifications

While the above methods will correct some site-specific factors affecting metals toxicity, further refinements are possible. EPA has issued guidance (Water Quality Standards Handbook, 1983; Guidelines for Deriving Numerical Aquatic Site-Specific Water Quality Criteria by Modifying National Criteria, EPA-600/3-H4-099, October 1984) for three site-specific criteria development methodologies: recalculation procedure, indicator species procedure (also known as the water-effect ratio (WER)) and resident species procedure. Only the first two of these have been widely used.

10/25/93 15:02

2202 200 3304

EPA/051

0004

OMNATE NATURAL RESOURCES

EXHIBIT NO. 9DATE 2-13-95BILL NO. SB - 331

In the National Toxics Rule (57 FR 60848, December 22, 1992), EPA identified the WER as an optional method for site-specific criteria development for certain metals. EPA committed in the NTR preamble to provide guidance on determining the WER. A draft of this guidance has been circulated to the States and Regions for review and comment. As justified by water characteristics and as recommended by the WER guidance, we strongly encourage the application of the WER across a watershed or waterbody as opposed to application on a discharger by discharger basis, as technically sound and an efficient use of resources.

In order to meet current needs, but allow for changes suggested by protocol users, EPA will issue the guidance as "interim." EPA will accept WERs developed using this guidance, as well as by using other scientifically defensible protocols. (OW expects the interim WER guidance will be issued in the next two months.

Total Maximum Daily Loads (TMDLs) and National Pollutant Discharge Elimination System (NPDES) Permits

o Dynamic Water Quality Modeling

Although not specifically part of the reassessment of water quality criteria for metals, dynamic or probabilistic models are another useful tool for implementing water quality criteria, especially for those criteria protecting aquatic life. These models provide another way to incorporate site-specific data. The 1991 Technical Support Document for Water Quality-based Toxics Control (TSD) (EPA/505/2-90-001) describes dynamic, as well as static (steady-state) models. Dynamic models make the best use of the specified magnitude, duration, and frequency of water quality criteria and, therefore, provide a more accurate representation of the probability that a water quality standard exceedence will occur. In contrast, steady-state models make a number of simplifying, worst case assumptions which makes them less complex and less accurate than dynamic models.

Dynamic models have received increased attention over the last few years as a result of the widespread belief that steady-state modeling is over-conservative due to environmentally conservative dilution assumptions. This belief has led to the misconception that dynamic models will always lead to less stringent regulatory controls (e.g., NPDES effluent limits) than steady-state models, which is not true in every application of dynamic models. EPA considers dynamic models to be a more accurate approach to implementing water quality criteria and continues to recommend their use. Dynamic modeling does require commitment of resources to develop appropriate data. (See Attachment #3 and the TSD for details on the use of dynamic models.)

o Dissolved-Total Metal Translators

Expressing water quality criteria as the dissolved form of a metal poses a need to be able to translate from dissolved metal to total recoverable metal for TMDLs and NPDES permits. TMDLs for metals must be able to calculate: (1) dissolved metal in order to ascertain attainment of water quality standards, and (2) total recoverable metal in order to achieve mass balance necessary for permitting purposes.

10/25/93 17:00

0202 200 0001

EPA-DST

0005

STATE NATURAL RESOURCES  
PROJECT NO. 9  
DATE 2-13-95  
SAL NO. 58-231

EPA's NPDES regulations require that limits of metals in permits be stated as total recoverable in most cases (see 40 CFR §122.45(c)) except when an effluent guideline specifies the limitation in another form or the metal. The approved analytical methods measure only dissolved metal, or the permit writer expresses a metals limit in another form (e.g., dissolved, valent, or total) when required to carry out provisions of the Clean Water Act. This is because the chemical conditions in ambient waters frequently differ substantially from those in the effluent, and there is no assurance that effluent particulate metal would not dissolve after discharge. The NPDES rule does not require that State water quality standards be expressed as total recoverable; rather, the rule requires permit writers to translate between different metal forms in the calculation of the permit limit so that a total recoverable limit can be established. Both the TMDL and NPDES uses of water quality criteria require the ability to translate between dissolved metal and total recoverable metal. Attachment #3 provides methods for this translation.

### Guidance on Monitoring

#### o Use of Clean Sampling and Analytical Techniques

In assessing waterbodies to determine the potential for toxicity problems due to metals, the quality of the data used is an important issue. Metals data are used to determine attainment status for water quality standards, discern trends in water quality, estimate background loads for TMDLs, calibrate fate and transport models, estimate effluent concentrations (including effluent variability), assess permit compliance, and conduct research. The quality of trace level metal data, especially below 1 ppb, may be compromised due to contamination of samples during collection, preparation, storage, and analysis. Depending on the level of metal present, the use of "clean" and "ultra-clean" techniques for sampling and analysis may be critical to accurate data for implementation of aquatic life criteria for metals.

The magnitude of the contamination problem increases as the ambient and effluent metal concentration decreases and, therefore, problems are more likely in ambient measurements. "Clean" techniques refer to those requirements (or practices for sample collection and handling) necessary to produce reliable analytical data in the part per billion (ppb) range. "Ultra-clean" techniques refer to those requirements or practices necessary to produce reliable analytical data in the part per trillion (ppt) range. Because typical concentrations of metals in surface waters and effluents vary from one metal to another, the effect of contamination on the quality of metals monitoring data varies appreciably.

We plan to develop protocols on the use of clean and ultra-clean techniques and are coordinating with the United States Geological Survey (USGS) on this project, because USGS has been doing work on these techniques for some time, especially the sampling procedures. We anticipate that our draft protocols for clean techniques will be available in late calendar year 1993. The development of comparable protocols for ultra-clean techniques is underway and will be available in 1995. In developing these protocols, we will consider the costs of these techniques and will give guidance as to the situations where their use is necessary. Appendix B to the WER guidance document provides some general guidance on the use of

10/25/93 15:04 0302 200 0001

EPA-OST

0008

CLEANER NATURAL RESOURCES

EXHIBIT NO. 9DATE 2-13-95BILL NO. SB-231

clean analytical techniques. (See Attachment #4.) We recommend that this guidance be used by States and Regions as an interim step, while the clean and ultra-clean protocols are being developed.

#### o Use of Historical Data

The concerns about metals sampling and analysis discussed above raise corresponding concerns about the validity of historical data. Data on effluent and ambient metal concentrations are collected by a variety of organizations including Federal agencies (e.g., EPA, USGS), State pollution control agencies and health departments, local government agencies, municipalities, industrial dischargers, researchers, and others. The data are collected for a variety of purposes as discussed above.

Concern about the reliability of the sample collection and analysis procedures is greatest where they have been used to monitor very low level metal concentrations. Specifically, studies have shown data sets with contamination problems during sample collection and laboratory analysis, that have resulted in inaccurate measurements. For example, in developing a TMDL for New York Harbor, some historical ambient data showed extensive metals problems in the harbor, while other historical ambient data showed only limited metals problems. Careful resampling and analysis in 1992/1993 showed the latter view was correct. The key to producing accurate data is appropriate quality assurance (QA) and quality control (QC) procedures. We believe that most historical data for metals, collected and analyzed with appropriate QA and QC at levels of 1 ppb or higher, are reliable. The data used in development of EPA criteria are also considered reliable, both because they meet the above test and because the toxicity test solutions are created by adding known amounts of metals.

With respect to effluent monitoring reported by an NPDES permittee, the permittee is responsible for collecting and reporting quality data on a Discharge Monitoring Report (DMR). Permitting authorities should continue to consider the information reported to be true, accurate, and complete as certified by the permittee. Where the permittee becomes aware of new information specific to the effluent discharge that questions the quality of previously submitted DMR data, the permittee must promptly submit that information to the permitting authority. The permitting authority will consider all information submitted by the permittee in determining appropriate enforcement responses to monitoring/reporting and effluent violations. (See Attachment #4 for additional details.)

#### Summary

The management of metals in the aquatic environment is complex. The science supporting our technical and regulatory programs is continuing to evolve, just as in all areas. The policy and guidance outlined above represent the position of OW and should be incorporated into ongoing program operations. We do not expect that ongoing operations would be delayed or deferred because of this guidance.

202-260-5400

202-260-5400

EPA OST

007

## CLEANER NATURAL RESOURCES

EXHIBIT NO. 9DATE 2-13-95BILL NO. SB-231

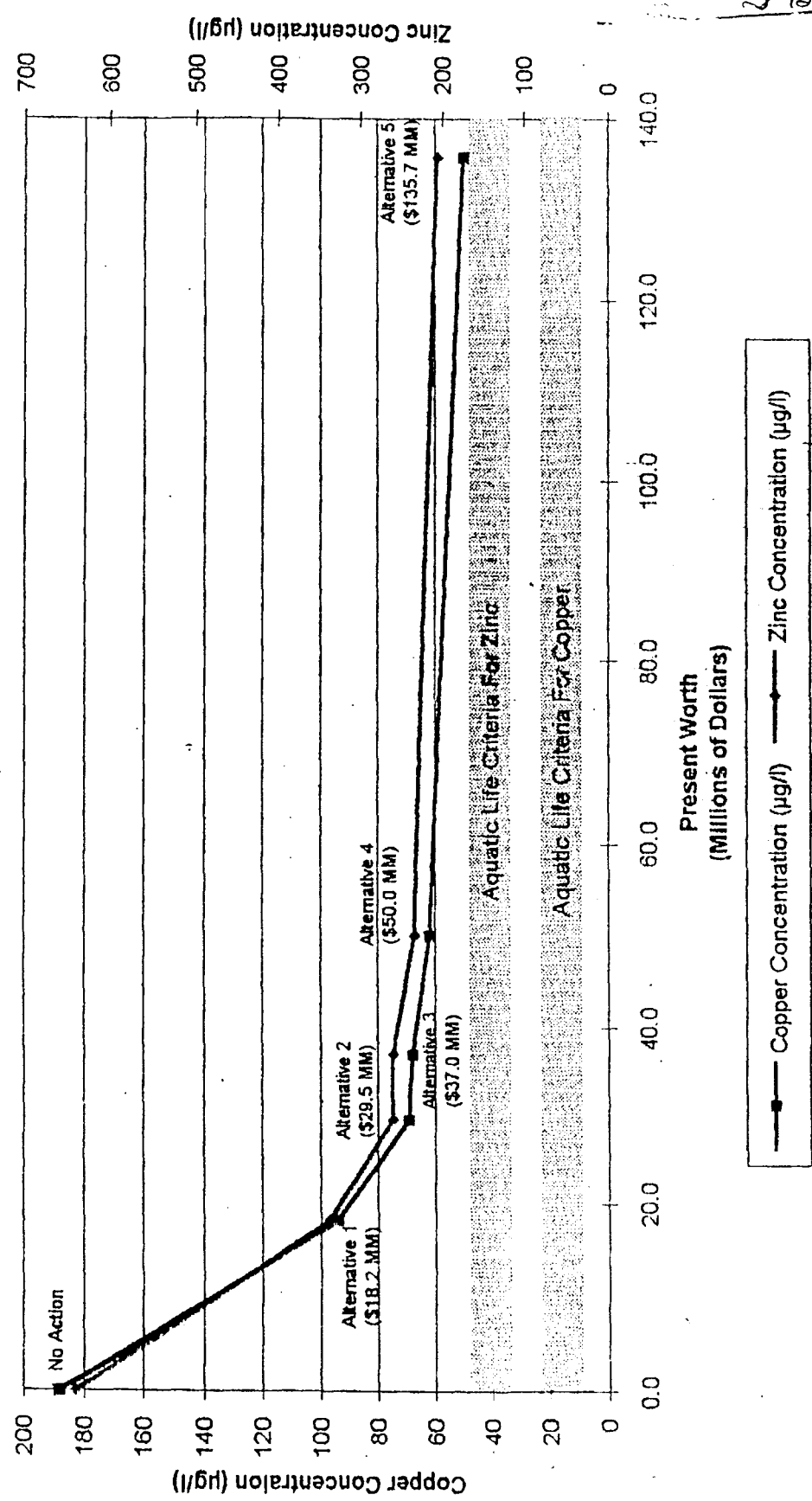
If you have questions concerning this guidance, please contact Jim Harlon, Acting Director, Office of Science and Technology, at 202-260-5400. If you have questions on specific details of the guidance, please contact the appropriate OW Branch Chief. The Branch Chiefs responsible for the various areas of the water quality program are: Bob April (202-260-6377, water quality criteria), Elizabeth Fellows (202-260-7046, monitoring and data issues), Russ Kinerson (202-260-1330, modeling and translators), Don Brady (202-260-7074, Total Maximum Daily Loads), Sheila Frace (202-260-9537, permits), Dave Sabock (202-260-1315, water quality standards), Bill Telliard (202-260-7134, analytical methods) and Dave Lyons (202-260-8310, enforcement).

Attachments

STATE NATURAL RESOURCES  
 EXHIBIT NO. 10  
 DATE 2-13-95  
 BILL NO. SB-331

STATE NATURAL RESOURCES  
 10  
 2-13-95  
 SB-331

# RESIDUAL COPPER AND ZINC CONCENTRATIONS IN SILVER BOW CREEK FOR EE/CA RESPONSE ALTERNATIVES



# ARSENIC WATER QUALITY STANDARDS

212

CURRENT MONTANA & EPA DRINKING WATER STANDARD	0.05 ppm
CHRONIC AQUATIC VALUE TO PROTECT FISH & AQUATIC LIFE	0.19 ppm
CURRENT MONTANA HUMAN HEALTH STANDARD	0.000018 ppm
PROPOSED 10 <sup>3</sup> HEALTH RISK BASED STANDARD	0.02 ppm
AVERAGE ARSENIC 1992 MISSOURI RIVER AT TOSTON	0.024 ppm





SENATE NATURAL RESOURCES

EXHIBIT NO. 12DATE 2-13-95BILL NO. SB-331

ERA® PROPERTY STORE

SENATOR LARRY J. TVEIT  
NATURAL RESOURCES DEPT.  
HELENA, MT

I URGE YOU TO VOTE IN FAVOR OF  
SENATE BILL 331.  
THANK YOU.

PAM WILLETT  
BROKER/OWNER



TO: SENATORS

LARRY TUGIT

LORENTO GROSFIELD

VIVIAN BROOKE

SENATE NATURAL RESOURCES

EXHIBIT NO. 12

DATE 2-13-95

BILL NO. SB-331

RE: SENATE BILL 331

PLEASE SUPPORT SB 331! RECENT  
LEGISLATION HAS MADE IT ALMOST IMPOSSIBLE  
TO INSTALL A SEPTIC SYSTEM IN MUCH OF  
RURAL MT. A MAJOR BLOW TO AFFORDABLE HOUSING  
AND OUR RURAL RESIDENTS IN GENERAL!  
WE SHOULD NOT HOLD RURAL TAXPAYERS  
TO STANDARDS WHICH ARE HIGHER THAN  
THOSE OF RESIDENTS ON MUNICIPAL SEWER  
SYSTEMS. LET'S BE FAIR.

DAVID M BAILEY  
P.O. BOX 10

HM # 735 3965  
WT # 752-1555

By way of introduction, my name is Dave Gano, I'm a blacksmith, and raise beef cattle with my family. We live on Tony Crik, east of Melville, in Sweet Grass county and I am not a political activist. I am currently serving as Vice-chair of Cottonwood Resource Council, which is one of several political action groups in Sweet Grass County. How a non-political activist is currently Vice-chair of a citizen's action group is kind of a funny story which I won't go into. I attend meetings, I write letters, read newsletters, study draft legislation, make phone calls, and occasionally travel to Helena to try to make a voice for what I believe in. The reason I'm not a political activist is because I have no faith in politics - less so, now, than I did when I first became involved with CRC and really began trying to educate myself, politically. Personally, I'm convinced that the only real hope we have for ourselves and Creation is Spiritual, and just as soon as I get my own unruly self into line, the rest of you might hear more from me on the subject, but, judging by my current progress, I won't be in a position to preach to anyone in this lifetime. All the same, Spirit is the reason I'm here - or, rather, there - or, actually.... not there. The reason I'm not there is because I'm calving (not me, but our cows, you understand). The reason I'm involving myself in this process (against my preference and my nature), the reason I look like a political activist when I'm not, the reason I am sometimes mistaken for the blankety blank environmentalist that every body is so afraid of, and the reason I'm submitting this to you is that God and I have a deal.

In exchange for the gift of ~~THE~~ NATURAL RESOURCES  
obligated to show the utmost respect for Her Creation  
and to do my best to love and care for it... to be  
a Good Steward, to be a Good Husbandman. I do  
always want to do it, and often when I try, I  
dissappoint myself, but I don't really have a choice.  
I have to keep trying.

Technology and the Law are not my gods. I obey  
the law (almost always), and I respect technology, but  
they are both very limited systems in the overall scheme  
of things. Technology, like Statistics, can be made  
to argue any point of view, and is often called  
upon to argue opposing points of view! And, as for  
the Law.... having personally made repeated and  
determined assaults on stacks of legal documents  
I am convinced that Legal Language is the province  
of a tribe of demons, related directly to the band  
behind the Internal Revenue Service, who work in  
the dark hours to cast Stupefying Spells to discourage  
anyone who hasn't been initiated from peering  
into their Domain!

You all must work within that realm. That  
prompts my admiration and, at the same time,  
arouses my suspicions! While you may be  
comfortable with the Law, you may understand  
"Legaleeze", you may even love it, I suggest that  
the Law's purpose is to serve Life, and not the  
other way around. That's why my voice is as valid  
as legal or technological testimony.... Because the  
real issue is always one of Balance - critical,  
and maybe impossible to maintain.

Water is out of balance. We've taken it so

that it's no surprise that our use and abuse is catching up with us. Those of us fortunate enough to live in Montana are luckier than most of us in this country. We still have relatively good water, but that's no reason for complacency. This is not a time to take further liberties. We are obligated, as good stewards, to safeguard what we are blessed with, and if that means all of us, I guess we better start doing whatever it's going to take.

Ranchers are notoriously independent, as a group - which we aren't, because we can never agree on anything, and we don't like crowds! We live and work alone, a lot, and are regularly confronted by situations that nobody else can, or will, deal with. The life fosters and encourages independence so we don't even like the notion of somebody else telling us what we can or can't, should or shouldn't do - not the blankety-blank bureaucrats and not the blankety blank environmentalists, either, but if we are all part of the problem, then we all have to be part of the solution, or there will be no solution. Ultimately, it is in our own best interest.

I have never met a person who I thought wise who claimed that quality for his or her self. Anybody who tells me he is wise has just disqualified himself, in my book. If he was really wise, he'd be wise enough to keep his mouth shut about it. So, the self-proclaimed wise, reveal themselves to me as fools. Intelligent? Probably. Brilliant? Possibly. Wise? I don't think so - just another fool, and fools I

I can remember. That's why I don't argue facts, figures, and logic. The truth about that stuff is that it's just what we use to try to make our own point of view look real. But, more than that, I can't keep track of things like that - I just don't work that way! So, if my testimony seems foolish to you, that may be entirely appropriate. At least I've said my say and I thank you for the opportunity. In closing, I'll leave you with the question of what you think is more straight forward - a load of horse manure that admits it came from a horse, or a load of manure that presumes itself to be wise!

Dave Gano  
Melville, MT

## Senate Natural Resources Committee

Monday, February 13, 1995

Testimony on Senate Bill 331

Glenn Marx, Policy Director, Governor Racicot's Office

Mr. Chairman, for the record I'm Glenn Marx and I serve as policy director for Governor Marc Racicot.

As you've heard from some of the proponents of this bill, during the last two weeks the sponsor of the SB 331, mining industry representatives and management and staff at the Department of Health and Environmental Sciences have been meeting in an attempt to reach technical and procedural agreements regarding the contents of this bill.

Those discussions have been largely successful, and the governor offers his sincere appreciation to the sponsors of this bill and the department for the "good faith" cooperative approach on this bill. Had the industry decided to rush forward with its absolute legislative wish list, it would have touched off the kind of useless and wasteful environmental emotional holy war that nobody wins. The lengthy discussions between industry and the department were productive in that, from the State's standpoint at least, such a war is not necessary. But it appears we can't get by without at least a factual skirmish.

It is also worth pointing out the original version of this bill would have probably resulted in the loss of water quality primacy for the state. This new version of the bill abolishes that aspect of discussion and allows us to scale the debate back to what I'm sure will be a stimulating discussion focused in part on risk assessment.

Yes, risk assessment is one key area of disagreement. But this is a legitimate area of dispute, an area which merits a public policy focus, and therefore an area which deserves serious legislative examination. The Governor respects the position of industry in seeking to retain and expand job opportunities in Montana, and respects the department obligation of environmental regulation to protect public health and aquatic life. Neither focus, of course, is exclusive. Industry does demonstrate environmental stewardship, and the department does recognize that people must live and work in this state, and that the actions of people impact water quality.

The department will follow me and offer specific language for a handful of amendments which address the State's concerns. As an introduction to those amendments, and as a framework for policy discussion of two critical areas, let me provide some background information on the Governor's approach to this bill and water quality protection.

The State of Montana has a legal and constitutional obligation to protect public health. Every comment made by me the department

must be filtered through that obligatory screen. And not only does that public health screen determine regulatory actions here and now, but it must also provide a baseline of protection for environmental consequences unknown or uncertain now, and only felt in the near or distant future. That regulatory baseline can be described in one word: prevention.

This emphasis on prevention serves as the basis for two key policy amendments to SB 331. These amendments center on Section 2 of the bill, and relate to one, the publicly-accepted public health risk for cancer-causing agents...and two, a procedurally-sound way to measure metals in streams. Prevention and caution, constrained by real-world realities, form the basis of virtually every amendment the State proposes.

Right now in Montana, the acceptable risk of contracting cancer through water-borne pollutants is one in one-million. That standard is set in both law and rule. This bill proposes to change that risk threshold to one in ten-thousand for all cancer-causing agents except arsenic, which would be one in one-thousand.

Montana, like most western states, has a high rate of natural arsenic and Montana's policies must reflect that natural arsenic rate. Yet standards should be, must be, and will be, set. And because of the State's fundamental obligation of true health risk prevention, we propose to modify both the existing legal standards and the proposed changed standards suggested in this bill. From a scientific and public health standpoint, the State believes it is safe to lower the cancer-causing agent threshold from one in one-million to one in one hundred thousand. That figure should be compared to your risk of dying in a car wreck, which is one in sixty-five. Roughly half the states in the nation have adopted the one in one hundred thousand cancer risk level from water-borne pollutants.

Arsenic presents a separate challenge, and is a separate issue. The state believes public health would still be protected by lowering the arsenic threshold to one in one thousand. Thus, in this case, we concur with the sponsor's amendments.

Agreeing to lower a standard is not an easy decision to make. Keep in mind this new rate would be set at about 18 parts per billion, which is detectable and is approximately the naturally occurring rate of arsenic in Montana. The drinking water standard for arsenic is 50 parts per billion, which means the proposed level of 18 parts per billion is more than twice as stringent as the drinking water standard.

The State does not believe we in any way compromise public health by proposing this risk threshold. And we reserve the right to aggressively move to modify this established risk threshold with the advent of any new available scientific information.

It should be pointed out that establishing a risk threshold



is not nearly as tidy, nor precise, as convicting a criminal. Science is continually evolving, technology is constantly improving, and new debates are perpetually stirred. Acceptable risk levels of cancer-causing agents is invariably not a sheer scientific decision nor a strictly government decision but is in fact a public policy decision based upon public's tolerance for -- and acceptance of -- risk. It is appropriate that the Legislature, as representatives of the people of Montana, make a public policy decision -- with full public comment -- based upon the best information available. In fact, this is the exact public process EPA wants states to follow in establishing risk levels. The DHES will assist you in any way possible, and the State has provided a risk recommendation based upon what we see through the filter of public health protection.

The second serious policy issue in the bill is the question of what process is used to count impurities in the water. Should the state measure only dissolved metals in the water or should the state measure the total recoverable metals?

The State believes measurement should be consistent and expansive to make sure we quantify actual parameters of everything we can, in fact, quantify. That is, it seems to us, the only true test of actual water quality. When you are on a diet, you have to count every calorie, because every calorie contributes to weight gain. When you protect water, you have to count every impurity, because every impurity contributes to water degradation. I'm sure the department will have a more scientific example of why the State proposes an amendment to this aspect of SB 331. But simply put, water quality protection should be inclusive, not exclusive.

Mr. Chairman, while the State stands as an opponent to this bill, it does so recognizing the tremendous amount of work by the sponsor and the department which preceded this hearing. We also recognize there are only a couple significant areas of policy dispute and a few other procedural disputes embodied in the bill. But the basic obligation to protect public health and err on the side of prevention compels the State to take this posture. Should the department's amendments be adopted, the State would be in support this bill.

Thank you for the opportunity to testify.

## SENATE BILL 331

## TESTIMONY

## DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

**Steven L. Pilcher, Administrator  
Water Quality Division**

The Department of Health and Environmental Sciences appears before you today in opposition to SB 331 in the introduced form. Let me begin by recognizing the substantive amendments being offered by the sponsor. The water quality division has been working with industry representatives on these proposed amendments for some time and we appreciate the opportunity to discuss and resolve many of the concerns and issues of the bill. Mr. Marx, on behalf of Governor Racicot has provided an excellent summary of our position on the bill and I would like to follow with more technically based testimony on several provisions of the bill.

Section 1 seeks to restrict the ability of the board to adopt standards which are more stringent than federal standards by requiring significant findings and justification. I would point out that our standards are based on federal guidelines and are submitted to and approved by the Federal Environmental Protection Agency with the important exception of ground water standards. There are no federal guidelines or standards for ground water. This provision would limit our ability to adopt technology based treatment requirements when EPA has failed to do so.

Section 2 proposes water quality standards that would not meet federal guidance and would not be approved by EPA. If these standards are approved, EPA would move to adopt our current standards creating a duplicate standard system. They would also likely terminate our delegation agreement for the issuance of waste discharge permits under Federal law resulting in the need for two permits for each facility discharging wastes to state waters.

The proposed amendments would delete this section to eliminate the risks of federal assumption of these programs but would incorporate, in a different section, legislatively mandated risk levels for human carcinogens. The proposed levels are one excess case of cancer per 10,000 (10-4) people for all carcinogens except arsenic where the risk level would be one excess case per 1,000 people (or 10-6) or about 18 parts per billion. The arsenic limit for drinking water is 50 parts per billion or a risk level of about one excess case per 750 people.

The risk level in our present standards is one excess case per million people (10-6) and is the risk level adopted by about one half of the states. The remaining states have adopted a risk level of one in one hundred thousand people (10-5). For comparative purposes the risk of death due to; a motor vehicle accident is 1 in 65, falls 1 in 186, and for home accidents it is 1 in 130 people.

Section 2 also contains a requirement that standards for metals be based on the dissolved method of analyses. Although use of the dissolved method of analyses for standards has been approved in some states we must oppose this change for the following reasons:

- ◆ all of our current standards were developed using total recoverable methods of analyses.
- ◆ Although the EPA will accept standards based on the dissolved method of analyses EPA requires that discharge limits for permits be based on the total recoverable method of analyses. Thus, instream compliance monitoring would require both types of analyses.
- ◆ The dissolved method of analysis requires filtering the samples in the field. Such filtering is very difficult in freezing weather and is much more expensive and prone to error than is the total recoverable method.
- ◆ The dissolved method of analyses does not measure all of the pollutants present. We would like to provide a quick demonstration that illustrates our concern.
- Most of the water quality data that exists in the data files is based on the total recoverable method and this data will not be comparable to new data based on the dissolved method.

Section 3 provides that the board shall adopt site specific standards. While this is a good concept, we are concerned that site specific standards reflect the impact of all routes of exposure to contaminants. There are cases where significant toxicity may be caused by fish ingesting contaminated sediment or bugs.

Section 4 proposes to modify a number of definitions. The proposed change in the definition of "Degradation" would require a complete revision of the nondegradation rules.

The proposed amendments to this definition will require relatively minor changes to the rules.

The proposed changes in the definitions of "Industrial" and "Other wastes" would remove the permitting requirements for these structures.

The proposed amendments delete these changes. DATE 2-13-95

BILL NO. SB-331

The proposed change to the definition of "State Waters" is not compatible with the fact that all waters belong to all of the people and that these waters deserve protection under the provisions of the water quality act.

The proposed amendments provide that ponds or lagoons used solely for treating, transporting or impounding pollutants are not state waters and is acceptable to the Department.

Section 5 requires coordination of our permitting process with that of other state agencies. While we now attempt to coordinate those functions, we welcome the specific legislative directive.

Section 7 directs us to establish a classification for intermittent or ephemeral streams and we agree with this need. The proposed amendment would be of value to the Department. We are, however, concerned with the proposed changes to 75-5-301(2) which require that standards be "cost-effective and economically and technologically feasible". While this condition is appropriate for establishment of treatment standards, it is inappropriate for water quality standards. Water quality standards must be set at levels that are protective of the beneficial uses. The language as proposed would result in federal promulgation of standards for Montana.

The proposed amendments would delete this change.

The proposed changes requiring that nitrate concentrations in ground water of less than 10 milligrams per liter be nonsignificant would completely negate the nondegradation concept for ground water and would significantly reduce the protection of the ground water.

The proposed amendments would result in considerable protection for ground water and would significantly reduce the burdens on the department and the regulated public.

Section 8 requires all known misclassified waters be reclassified in a timely manner. Due to the list of known misclassified streams, this effort would require significant additional resources.

The proposed amendments would provide the Department with more flexibility and reduce the resource demand.

Section 11 proposes changes to the definition of "natural" in 75-5-306 would conflict with common sense and federal requirements in that it would provide that the conditions of waters which were receiving raw sewage in 1971 would be considered natural.

The proposed amendments delete this change.

Section 13 establishes a new requirement that all permits be reviewed for completeness within 30 days and that the first review must include all issues. While it is appropriate to demand reasonable and timely response to submittals, the current language is not practical. Complying with this requirement would require additional resources beyond what we have requested through the budget process.

The proposed amendments extend this time to 60 days and applies to only new permits, and somewhat limits the requirement that the first review include all issues.

Section 15 modifies the current provisions for holding a contested case hearing and would require that a contested case be held in the county of the violation unless the alleged violator wanted the case to be heard in Lewis and Clark County. This change would require extensive board travel and increased expense.

The proposed amendments remove this requirement.

Section 16 includes a proposed requirement that civil actions take place in the county of the violation. Such a limitation will increase staff travel and per diem expenses.

No amendment has been proposed to address our concern.

Hopefully my comments have pointed out clearly the effort that has gone into our discussions with industry on this bill. While a couple of areas of disagreement still exist, we have made substantial progress on this bill and we ask for your support of the amendments that have been offered and of those offered by the Department.

DATE 2-13-95

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: 330, 331, 362, 346

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Dorothy Smith	Sierra Club	all	<del>quali-</del> 346, 330, 331, 362	
Richard Parks	NPRC	all		
Alan Rolles	MWF	All	(371)	✓
Jim Baran	Beantooth Alliance			✓
DONALD KERN	SELF	ALL		X
Joe Gutkoski Pres.	Madison Gallatin Alliance	All		✓
MIKE MURPHY	MT. WATER RES. ASSN	330 331 362 371	✓	
Scott McMillion	Bozeman Chapter	all		
Lorna Frank	MT. Farm Bureau	all	✓	
Dave Hunt	SELF	ALL		
CANDACE Torgerson	MT. Cattlemen	ALL	X	
Raymond Lazzuk	Golden Sunlight Mine	All	X	
Therese	NPRC	346	X	
Alan Josephyn	Golden Sunlight Mines	330 & 331	X	

## VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2/13

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: 330-331 362  
346

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Don Parker	Crown Butte Mines	330-331	✓	
Bob Wallace	not mine assn	330-331	✓	
Hope Stevens	Citizen	330-331	✓	✓
Laurie Gano	Citizen	<sup>346</sup> 330-331	✓	✓
Glennice Ore	NPRC	330, 331		✓
Steve Piche	DHES	330-331		✓
ROBIN CUNNINGHAM	FISHING OUTFITTEDS ASSN- OF MONTANA	330- 331		✓
GAIL ABERCROMBIE	MT Petroleum Assn	331 362	✓	
Larry Brown	Ag Pres. Assn <sup>371</sup>	331 <sup>346</sup> 330 362	✓	
DENNIS TVERSON	NMOMA	362	✓	
Don Allen	MT Wood Products Assn	330-331	✓	
Peggy Trenk	WETA	371	✓	
Russ Potter	MT Resources	331 362	✓	
John Bloomquist	MT Stockgrowers	330, 331, 362, 371	✓	

## VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2-13-95

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: SB 330, SB 331, SB-362  
SB 346

< ■ >

PLEASE PRINT

< ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Nick Golder	NPRC	SB 330 SB 331		<input checked="" type="checkbox"/>
GARY FORRESTER	SD#8	346	<input checked="" type="checkbox"/>	
COLLIN BANGS	REACTORS	331		
Jim Mockler	MT. Coal Council	SB 330 SB 331	<input checked="" type="checkbox"/>	
Tamara J. Johnson	CURE	SB 330 SB 331	<input checked="" type="checkbox"/>	
Al Kingston	Self	SB 330 331	<input checked="" type="checkbox"/>	
Joe Cross	SELF	SB 330 331	<input checked="" type="checkbox"/>	
Bruce Farling	MONTANA TROUT Unlimited	SB 330 SB 331		<input checked="" type="checkbox"/>
Willa Hall	LWV	SB 330 SB 331		<input checked="" type="checkbox"/>
R F LABBE	City of DEER Lodge	SB 331	<input checked="" type="checkbox"/>	
WILBUR	Hydro-metals	SB 330 SB 331	<input checked="" type="checkbox"/>	
WANDY WASH	ARCO	SB 330 SB 331	<input checked="" type="checkbox"/>	
Jack Smith	Smith-Schmidt	SB 330 SB 331	<input checked="" type="checkbox"/>	
Susan Callaghan	Montana Power	SB 330 SB 331	<input checked="" type="checkbox"/>	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY



DATE 2/13/96

SENATE COMMITTEE ON Nat. Resources

BILLS BEING HEARD TODAY: 330, 362, 331  
Sp 346

< ■ >

PLEASE PRINT

< ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
MAISHAH PRICE	ENTERPRISE TENT-A-CAT			
Robert Ward	Enterprise Tent-a-Cat			
ACK MORCENSTERN	MT CONFR ASSOC			
CURT LANCE	HELENA CHRYSLER-KISSAN			
MARV DYK	MDT			
Ken Knapp	MRAW			
Dick Juntunen	Santa Fe Pacific Gold.		346, 330 331, 362 371	
Hope Stevens				
Ron A Andersen				
JOHN A. KRUTAR				X
Brian Kuehl	Greater Yellowstone Coal.			X
Jim Jensen	WELC 371	330, 331 362, 346		X
<del>Paul S. Fenn</del>	Self			X
Andrea Standler	NPRC			X

## VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2-13-95

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: SB 320, SB 321, SB-362  
SB-346

< ■ >

PLEASE PRINT

< ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
<u>John Youngberg</u>	<u>MT Farm Bureau</u>	<u>362</u> <u>372</u>	<u>X</u>	
<u>Janet Ellis</u>	<u>MT Audubon</u>	<u>362</u> <u>346</u>		<u>X</u>
<u>Brian Kuehl</u>	<u>Greater Yellowstone Local</u>			<u>X</u>
<u>JOHN ARRIGO</u>	<u>DHES</u>	<u>SB 362</u>	<u>X</u>	
<u>John Fitzpatrick</u>	<u>Pegasus Gold</u>	<u>SB 362</u> <u>SB 371</u> <u>SB 350</u> <u>SB 331</u>	<u>X</u>	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2-13-95

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: SB-330, SB 331, SB 362  
SB 376

< ■ >

PLEASE PRINT

< ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Russ Ritter	MT Resources	330 331	<input checked="" type="checkbox"/>	
John Youngberg	Montana Farm Bureau	330 331	<input checked="" type="checkbox"/>	
Chris Tweeten	MT Dept of Justice	331		<input checked="" type="checkbox"/>
Melissa Tuemmler, R.S.	Broadwater County Jefferson County	330 331	<input checked="" type="checkbox"/>	
LARRY BROWN	Ag. Pres. Assoc.	330 346 331	<input checked="" type="checkbox"/>	
BOB ROBINSON	DIVES	330 + 331		<input checked="" type="checkbox"/>
<del>Janet</del> Janet Ellis	MT Audubon	<del>330</del> 330 + 331		<input checked="" type="checkbox"/>
Peggy Thew	WETA	330 + 331	<input checked="" type="checkbox"/>	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY