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House BILL NO. 411

INTRODUCED BY ORR Cobb Carbouch GRINDE Feland

Lukins Dandy Simon Beck JAMES Rehbein

Harvey Wagner Ons Esther Cole

A BILL FOR AN ACT ENTITLED "AN ACT PROVIDING THE CERTIFICATION REQUIRED BY SECTION 401 OF THE FEDERAL CLEAN WATER ACT FOR ACTIVITIES WITHIN THE COVERAGE OF NATIONWIDE PERMITS PROMULGATED BY THE U.S. ARMY CORPS OF ENGINEERS; AND DIRECTING THE AMENDMENT OF TITLE 16, CHAPTER 20, SUBCHAPTER 17, ADMINISTRATIVE RULES OF MONTANA."

WHEREAS, the U.S. Army Corps of Engineers is authorized by the federal Clean Water Act to issue permits for dredging and filling activities and for certain discharges that could impact waters of the United States; and

WHEREAS, section 401 of the federal Clean Water Act, 33 U.S.C. 1341, requires state certification that those proposed activities or discharges will comply with the water quality requirements adopted by the state pursuant to the federal Clean Water Act; and

WHEREAS, the U.S. Army Corps of Engineers has adopted a number of nationwide permits designed to regulate, with little, if any, delay or paperwork, certain activities that have minimal impacts; and

WHEREAS, blanket certification of the activities covered by the U.S. Army Corps of Engineers' nationwide permits is justified because of the minimal impacts of the activities covered by the permits and is desirable to avoid undue delay to applicants and unnecessary expense to the state.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** The Board of Health and Environmental Sciences shall amend Title 16, chapter 20, subchapter 17, Administrative Rules of Montana, by promulgating a new section to read:

" BLANKET CERTIFICATION FOR ACTIVITIES WITHIN NATIONWIDE PERMITS. Certification under 33 U.S.C. 1341, as amended, is granted for any activity within the coverage of any of the nationwide permits promulgated by the U.S. army corps of engineers pursuant to 33 CFR 330, as amended."

-END-

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INTRODUCED BY ORR <sup>House</sup> BILL NO 411 <sup>Cobb</sup> <sup>Arbuthnot</sup> <sup>GRINDE</sup> <sup>Feland</sup>

<sup>Lewis</sup> <sup>Rebein</sup>  
<sup>Harvey</sup> <sup>Wagner</sup> <sup>Ons</sup> <sup>Foster</sup> <sup>Cole</sup>  
<sup>Stacy</sup> <sup>DeYoung</sup>

A BILL FOR AN ACT ENTITLED, "AN ACT PROVIDING THE CERTIFICATION REQUIRED BY SECTION 401 OF THE FEDERAL CLEAN WATER ACT FOR ACTIVITIES WITHIN THE COVERAGE OF NATIONWIDE PERMITS PROMULGATED BY THE U.S. ARMY CORPS OF ENGINEERS; AND DIRECTING THE AMENDMENT OF TITLE 16, CHAPTER 20, SUBCHAPTER 17, ADMINISTRATIVE RULES OF MONTANA."

WHEREAS, the U.S. Army Corps of Engineers is authorized by the federal Clean Water Act to issue permits for dredging and filling activities and for certain discharges that could impact waters of the United States; and

WHEREAS, section 401 of the federal Clean Water Act, 33 U.S.C. 1341, requires state certification that those proposed activities or discharges will comply with the water quality requirements adopted by the state pursuant to the federal Clean Water Act; and

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House BILL NO. 411

INTRODUCED BY ORR Cobb Arbuckle GRINDE Feland  
Lubin Steady Simon Beck IMMS Rohbein  
Harvey Wagner Chs Water Walters Cole  
 OF THE FEDERAL CLEAN WATER ACT FOR ACTIVITIES WITHIN THE COVERAGE OF NATIONWIDE PERMITS PROMULGATED BY THE U.S. ARMY CORPS OF ENGINEERS; AND DIRECTING THE AMENDMENT OF TITLE 16, CHAPTER 20, SUBCHAPTER 17, ADMINISTRATIVE RULES OF MONTANA." Stearns DeYoung

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-END-



## 1 HOUSE BILL NO. 411

2 INTRODUCED BY ORR, COBB, PAVLOVICH, GRINDE, FELAND, TASH, QUILICI, GRADY, SIMON, BECK,  
3 GRIMES, REHBEIN, HARRINGTON, WAGNER, OHS, FOSTER, DEVLIN, COLE, STANG, KEATING

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5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THE CERTIFICATION REQUIRED BY SECTION 401  
6 OF THE FEDERAL CLEAN WATER ACT FOR ACTIVITIES WITHIN THE COVERAGE OF NATIONWIDE  
7 PERMITS PROMULGATED BY THE U.S. ARMY CORPS OF ENGINEERS; AND DIRECTING THE AMENDMENT  
8 OF TITLE 16, CHAPTER 20, SUBCHAPTER 17, ADMINISTRATIVE RULES OF MONTANA."  
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15 the state pursuant to the federal Clean Water Act; and

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21 is desirable to avoid undue delay to applicants and unnecessary expense to the state.

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23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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29 permits promulgated by the U.S. army corps of engineers pursuant to 33 CFR 330, as amended."  
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-END-

OFFICE OF THE GOVERNOR  
STATE OF MONTANA



MARC RACICOT  
GOVERNOR

STATE CAPITOL  
HELENA, MONTANA 59620-0801

March 24, 1995

The Honorable John Mercer  
Speaker of the House  
State Capitol  
Helena MT 59620

The Honorable Bob Brown  
President of the Senate  
State Capitol  
Helena MT 59620

Dear Speaker Mercer and President Brown:

In accordance with the power vested in me as Governor by the Constitution and laws of the State of Montana, I hereby veto House Bill 411, "AN ACT PROVIDING THE CERTIFICATION REQUIRED BY SECTION 401 OF THE FEDERAL CLEAN WATER ACT FOR ACTIVITIES WITHIN THE COVERAGE OF NATIONWIDE PERMITS PROMULGATED BY THE U.S. ARMY CORPS OF ENGINEERS; AND DIRECTING THE AMENDMENT OF TITLE 16, CHAPTER 20, SUBCHAPTER 17, ADMINISTRATIVE RULES OF MONTANA."

Section 401 of the federal Clean Water Act allows states to certify that activities for which the U.S. Corps of Engineers issues permits, including dredging and filling activities and discharges into state waters, meet state water quality standards.

Pursuant to that requirement, the Montana Department of Health and Environmental Sciences, every five years, decides which types of activities might have potential adverse impact on water quality, and should thus be reviewed. Most recently the State waived its review on all but four of the thirty-six categories of activities. The State's review has historically been completed in five to ten days, less than half of the time the Corps of Engineers has taken for its review. In 1994, we denied only one permit, although we conditioned several on the permittees making reasonable changes to their proposed activities.

House Bill 411 does away with state certification for all activities covered by the Corps of Engineers nationwide permit process, leaving the State to rely entirely on the federal government to protect its wetlands and headwater streams -- waters

that are of significantly higher quality than those of other states.

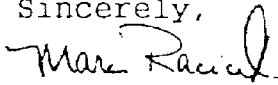
Nearly a third of the wetlands in Montana have been lost in the past fifty years. Declining water quality associated with wetland impacts should be minimized and curtailed whenever possible and that can only be accomplished by careful, yet expeditious, review of Corps permits. Similarly, the quality of our headwater streams must also be protected to sustain waters of sufficient quality to maintain or restore their beneficial uses.

The Department of Health and Environmental Sciences has been diligently working with the Corps and other agencies to develop certification requirements that would protect water quality and at the same time, accelerate the permitting process with minimal paperwork. Those discussions are in the final stages and final draft conditions are currently being negotiated. The joint efforts of the Corps and the Department satisfy the intent of House Bill 411 by facilitating and streamlining the permitting process. These efforts should alleviate the concerns applicants have voiced on this matter.

At a time when the Legislature and people of Montana are demanding less federal intervention and more state rights, this bill requires more federal intrusion and denies state rights. The bill wrongfully empowers the federal government and constricts the voice of Montana.

I believe that we need to continue to review certain activities now authorized under the nationwide permit program. I do not believe that we should diminish our own authority over our own resources.

Sincerely,



MARC RACICOT  
Governor