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INTRODUCED BY Gaiford BILL NO. 371

A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING "OUTSTANDING RESOURCE WATERS"; IDENTIFYING CERTAIN STATE WATERS AS OUTSTANDING RESOURCE WATERS; ESTABLISHING A PROCESS FOR STATE CLASSIFICATION OF OTHER WATERS AS OUTSTANDING RESOURCE WATERS; IDENTIFYING ACTIVITIES THAT ARE EXEMPT FROM THE WATER QUALITY NONDEGRADATION REVIEW PROCESS; AND AMENDING SECTIONS 75-5-103, 75-5-301, AND 75-5-303, MCA."

STATEMENT OF INTENT

A statement of intent is required for this bill because the bill gives the department of health and environmental sciences the authority to adopt administrative rules. It is the intent of the legislature that this legislation and the rules adopted pursuant to this legislation serve as Montana's regulatory scheme for both outstanding national resource waters and outstanding state resource waters. 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. The legislature intends that because this designation may severely limit future use of the designated water, the designation should be accomplished only after a very thorough examination of the environmental, social, and economic impacts.

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

Section 1. Section 75-5-103, MCA, is amended to read:

"75-5-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

- (1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.
- (2) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.
- (3) "Council" means the water pollution control advisory council provided for in 2-15-2107.
- (4) "Degradation" means a change in water quality that lowers the quality of high-quality waters for a parameter. The term does not include those changes in water quality determined to be nonsignificant



SB371  
INTRODUCED BILL

1 pursuant to 75-5-301(5)(c).

2 (5) "Department" means the department of health and environmental sciences provided for in Title  
3 2, chapter 15, part 21.

4 (6) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and  
5 includes sewage systems and treatment works.

6 (7) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations  
7 of chemical, physical, biological, and other constituents which are discharged into state waters.

8 (8) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971,  
9 whether or not those uses are included in the water quality standards.

10 (9) "High-quality waters" means state waters whose quality for a parameter is better than  
11 standards established pursuant to 75-5-301. All waters are high-quality water unless classified by the  
12 board within a classification for waters that are not suitable for human consumption or not suitable for  
13 growth and propagation of fish and associated aquatic life.

14 (10) "Industrial waste" means a waste substance from the process of business or industry or from  
15 the development of any natural resource, together with any sewage that may be present.

16 (11) "Interested person" means a person who has submitted oral or written comments on the  
17 department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term  
18 includes a person who has requested authorization to degrade high-quality waters.

19 (12) "Local department of health" means the staff, including health officers, employed by a county,  
20 city, city-county, or district board of health.

21 (13) "Mixing zone" means an area established in a permit or final decision on nondegradation issued  
22 by the department where water quality standards may be exceeded, subject to conditions that are imposed  
23 by the department and that are consistent with the rules adopted by the board.

24 (14) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark,  
25 lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or  
26 discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state  
27 waters.

28 (15) "Outstanding resource waters" means:

29 (a) state surface waters located in areas designated as national parks or national wilderness areas  
30 as of [the effective date of this act]; or

1            (b) other surface waters or ground waters classified by the board under the provisions of [section  
2 3] and approved by the legislature.

3            (16) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a  
4 point source.

5            ~~(16)~~(17) "Parameter" means a physical, biological, or chemical property of state water when a value  
6 of that property affects the quality of the state water.

7            ~~(17)~~(18) "Person" means the state, a political subdivision of the state, institution, firm, corporation,  
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9            ~~(18)~~(19) "Point source" means a discernible, confined, and discrete conveyance, including but not  
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11 or other floating craft, from which pollutants are or may be discharged.

12            ~~(19)~~(20) "Pollution" means contamination or other alteration of the physical, chemical, or biological  
13 properties of state waters which exceeds that permitted by Montana water quality standards, including but  
14 not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or the discharge,  
15 seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance into state  
16 water which will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to  
17 public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife. A discharge,  
18 seepage, drainage, infiltration or flow which is authorized under the pollution discharge permit rules of the  
19 board is not pollution under this chapter. Activities conducted under the conditions imposed by the  
20 department in short-term authorizations pursuant to 75-5-308 are not considered pollution under this  
21 chapter.

22            ~~(20)~~(21) "Sewage" means water-carried waste products from residences, public buildings,  
23 institutions, or other buildings, including discharge from human beings or animals, together with ground  
24 water infiltration and surface water present.

25            ~~(21)~~(22) "Sewage system" means a device for collecting or conducting sewage, industrial wastes,  
26 or other wastes to an ultimate disposal point.

27            ~~(22)~~(23) "Standard of performance" means a standard adopted by the board for the control of the  
28 discharge of pollutants which reflects the greatest degree of effluent reduction achievable through  
29 application of the best available demonstrated control technology, processes, operating methods, or other  
30 alternatives, including, where practicable, a standard permitting no discharge of pollutants.

1           ~~(23)~~(24) "State waters" means a body of water, irrigation system, or drainage system, either  
 2 surface or underground; however, this subsection does not apply to irrigation waters where the waters are  
 3 used up within the irrigation system and the waters are not returned to any other state waters.

4           ~~(24)~~(25) "Treatment works" means works, including sewage lagoons, installed for treating or  
 5 holding sewage, industrial wastes, or other wastes.

6           ~~(25)~~(26) "Water quality protection practices" means those activities, prohibitions, maintenance  
 7 procedures, or other management practices applied to point and nonpoint sources designed to protect,  
 8 maintain, and improve the quality of state waters. Water quality protection practices include but are not  
 9 limited to treatment requirements, standards of performance, effluent standards, and operating procedures  
 10 and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material  
 11 storage.

12           ~~(26)~~(27) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug,  
 13 jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition  
 14 of ground water."

15

16           NEW SECTION. **Section 2. Outstanding resource waters -- statement of purpose.** (1) The  
 17 legislature, understanding the requirements of applicable federal law and the uniqueness of Montana's water  
 18 resource, recognizes that certain state waters are of such environmental, ecological, or economic value that  
 19 the state should prohibit, to the greatest extent practicable, changes to the existing water quality of those  
 20 waters. Outstanding resource waters must be afforded the greatest protection feasible under state law,  
 21 after thorough examination.

22           (2) The purpose of this section and [section 3] is to provide this protection and to provide guidance  
 23 to the board in establishing rules to accomplish that level of protection.

24

25           NEW SECTION. **Section 3. Outstanding resource water classification -- rules -- criteria -- limitations**  
 26 **-- procedure.** (1) As provided under the provisions of 75-5-301 and this section, the board may adopt rules  
 27 regarding the classification of waters as outstanding resource waters. Neither this section nor rules  
 28 adopted pursuant to this section apply to an activity that is identified as nonsignificant under 75-5-301(5)(c)  
 29 and that is exempted from nondegradation review required under 75-5-303.

30           (2) The department may not:

1 (a) grant an authorization to degrade under 75-5-303 in outstanding resource waters; or

2 (b) grant an authorization to degrade if that authorization would cause significant degradation, as  
3 defined by board rules adopted under 75-5-301(5), in outstanding resource waters.

4 (3) (a) A person may petition the board for rulemaking to classify waters as outstanding resource  
5 waters. The board shall initially review a petition against the criteria identified in subsection (3)(c) to  
6 determine whether the petition contains sufficient credible information for the board to accept the petition.

7 (b) The board may reject a petition without further review if it determines that the petition does  
8 not contain the sufficient credible information required by subsection (3)(a). If the board rejects a petition  
9 under this subsection (3)(b), it shall specify in writing the reasons for the rejection and the petition's  
10 deficiencies.

11 (c) The board may not adopt a rule classifying state waters as outstanding resource waters until  
12 it accepts a petition and finds that, based on a preponderance of the evidence:

13 (i) the waters identified in the petition constitute an outstanding resource based on the criteria  
14 provided in subsection (4);

15 (ii) the classification is necessary to protect the outstanding resource identified under subsection  
16 (3)(a); and

17 (iii) there is no other effective process available that will achieve the necessary protection.

18 (4) The board shall consider the following criteria in determining whether certain state waters are  
19 outstanding resource waters. However, the board may determine that compliance with one or more of  
20 these criteria is insufficient to warrant classification of the water as an outstanding resource water. The  
21 board shall consider:

22 (a) whether the waters have been designated as wild and scenic;

23 (b) the presence of endangered or threatened species in the waters;

24 (c) the presence of an outstanding recreational fishery in the waters;

25 (d) whether the waters provide the only source of suitable water for a municipality or industry;

26 (e) whether the waters provide the only source of suitable water for domestic water supply; and

27 (f) other factors that indicate outstanding environmental or economic values not specifically  
28 mentioned in this subsection (4).

29 (5) After acceptance of a petition, the board shall require the preparation of an environmental  
30 impact statement, as provided under Title 75, chapter 1, part 2, when classification as an outstanding

1 resource water may cause significant adverse impacts to the environment, including significant adverse  
2 impacts to social or economic values.

3 (6) The board shall consult with other relevant state agencies when reviewing outstanding resource  
4 water classification petitions.

5 (7) (a) In accordance with 2-4-315, the board may deny an accepted outstanding resource water  
6 classification petition if it finds that:

7 (i) the requirements of subsection (3) have not been met; or

8 (ii) based on information available to the board from the environmental impact statement or  
9 otherwise, approving the outstanding resource waters classification petition would cause significant adverse  
10 environmental, social, or economic impacts.

11 (b) If the board denies the petition, it shall identify its reasons for petition denial.

12 (8) A rule classifying state waters as outstanding resource waters under this section may be  
13 adopted but is not effective until approved by the legislature.

14 (9) The board may not postpone or deny an application for an authorization to degrade state waters  
15 under 75-3-303 pending:

16 (a) board action on an outstanding resource water classification petition regarding those waters;

17 or

18 (b) legislative approval of board action designating those waters as outstanding resource waters.

19

20 **Section 4.** Section 75-5-301, MCA, is amended to read:

21 **"75-5-301. Classification and standards for state waters.** Consistent with the provisions of  
22 75-5-302 through 75-5-307 and 80-15-201, the board shall:

23 (1) establish and modify the classification of all waters in accordance with their present and future  
24 most beneficial uses;

25 (2) formulate standards of water purity and classification of water according to its most beneficial  
26 uses, giving consideration to the economics of waste treatment and prevention;

27 (3) review, from time to time at intervals of not more than 3 years, established classifications of  
28 waters and standards of water purity and classification;

29 (4) adopt rules governing the granting of mixing zones, requiring that mixing zones granted by the  
30 department be specifically identified, and requiring that mixing zones have:

- 1 (a) the smallest practicable size;
- 2 (b) a minimum practicable effect on water uses; and
- 3 (c) definable boundaries;
- 4 (5) adopt rules implementing the nondegradation policy established in 75-5-303, including but not
- 5 limited to rules that:
- 6 (a) provide a procedure for department review and authorization of degradation;
- 7 (b) establish criteria for the following:
- 8 (i) determining important economic or social development; and
- 9 (ii) weighing the social and economic importance to the public of allowing the proposed project
- 10 against the cost to society associated with a loss of water quality; and
- 11 (c) establish criteria for determining whether a proposed activity or class of activities, in addition
- 12 to those activities identified in [section 6], will result in nonsignificant changes in water quality for any
- 13 parameter in order that those activities are not required to undergo review under 75-5-303(3). These
- 14 criteria must be established in a manner that generally:
- 15 (i) equates significance with the potential for harm to human health or the environment;
- 16 (ii) considers both the quantity and the strength of the pollutant;
- 17 (iii) considers the length of time the degradation will occur; and
- 18 (iv) considers the character of the pollutant so that greater significance is associated with
- 19 carcinogens and toxins that bioaccumulate or biomagnify and lesser significance is associated with
- 20 substances that are less harmful or less persistent.
- 21 (6) to the extent practicable, ensure that the rules adopted under subsection (5) establish objective
- 22 and quantifiable criteria for various parameters. These criteria must, to the extent practicable, constitute
- 23 guidelines for granting or denying applications for authorization to degrade high-quality waters under the
- 24 policy established in 75-5-303(2) and (3).
- 25 (7) adopt rules to implement this section."
- 26

27 **Section 5.** Section 75-5-303, MCA, is amended to read:

28 **"75-5-303. Nondegradation policy.** (1) Existing uses of state waters and the level of water quality

29 necessary to protect those uses must be maintained and protected.

30 (2) Unless authorized by the department under subsection (3) or exempted from review under

1 [section 6], the quality of high-quality waters must be maintained.

2 (3) The department may not authorize degradation of high-quality waters unless it has been  
3 affirmatively demonstrated by a preponderance of evidence to the department that:

4 (a) degradation is necessary because there are no economically, environmentally, and  
5 technologically feasible alternatives to the proposed project that would result in no degradation;

6 (b) the proposed project will result in important economic or social development that exceeds the  
7 benefit to society of maintaining existing high-quality waters and exceeds the costs to society of allowing  
8 degradation of high-quality waters;

9 (c) existing and anticipated use of state waters will be fully protected; and

10 (d) the least degrading water quality protection practices determined by the department to be  
11 economically, environmentally, and technologically feasible will be fully implemented by the applicant prior  
12 to and during the proposed activity.

13 (4) The department shall issue a preliminary decision either denying or authorizing degradation and  
14 shall provide public notice and a 30-day comment period prior to issuing a final decision. The department's  
15 preliminary and final decisions must include:

16 (a) a statement of the basis for the decision; and

17 (b) a detailed description of all conditions applied to any authorization to degrade state waters,  
18 including, when applicable, monitoring requirements, required water protection practices, reporting  
19 requirements, effluent limits, designation of the mixing zones, the limits of degradation authorized, and  
20 methods of determining compliance with the authorization for degradation.

21 (5) An interested person wishing to challenge a final department decision may request a hearing  
22 before the board within 30 days of the final department decision. The contested case procedures of Title  
23 2, chapter 4, part 6, apply to a hearing under this section.

24 (6) Every 5 years, the department shall review authorizations to degrade state waters. To enable  
25 the department to adequately review authorizations as required under this section, the authorization holder  
26 shall revise the initial authorization application no sooner than 3 1/2 years and no later than 4 years after  
27 the date of the authorization or the date of the latest department review. The specific revised information  
28 required must be determined by the department. If, based on the review, the department determines that  
29 the standards and objectives of 75-5-303 or the rules adopted pursuant to 75-5-303 are not being met, it  
30 shall revoke or modify the authorization. A decision by the department to revoke or modify an authorization



1 may be appealed to the board.

2 (7) The board may not issue an authorization to degrade state waters that are classified as  
3 outstanding resource waters.

4 (8) The board shall adopt rules to implement this section."  
5

6 **NEW SECTION. Section 6. Nonsignificant activities.** (1) The categories or classes of activities  
7 identified in subsection (2) cause changes in water quality that are nonsignificant because of their low  
8 potential for harm to human health or the environment and their conformance with the guidance found in  
9 75-5-301(5)(c).

10 (2) The following categories or classes of activities are not subject to the provisions of 75-3-303:

11 (a) activities that are nonpoint sources of pollution when reasonable land, soil, and water  
12 conservation practices are applied and existing and anticipated beneficial uses will be fully protected;

13 (b) use of agricultural chemicals in accordance with a specific agricultural chemical ground water  
14 management plan promulgated under 80-15-212, if applicable, or in accordance with an environmental  
15 protection agency-approved label and when existing and anticipated uses will be fully protected;

16 (c) changes in existing water quality resulting from an emergency or remedial activity that is  
17 designed to protect public health or the environment and is approved, authorized, or required by the  
18 department;

19 (d) changes in existing water quality resulting from treatment of a public water supply system, as  
20 defined in 75-6-102, or a public sewage system, as defined in 75-6-102, by chlorination or other similar  
21 means that is designed to protect the public health or the environment and that is approved, authorized,  
22 or required by the department;

23 (e) the use of drilling fluids, sealants, additives, disinfectants, and rehabilitation chemicals in water  
24 well or monitoring well drilling, development, or abandonment, if used according to department-approved  
25 water quality protection practices;

26 (f) short-term changes in existing water quality resulting from activities authorized by the  
27 department pursuant to 75-5-308;

28 (g) land application of animal waste, domestic septage, or waste from public sewage treatment  
29 systems containing nutrients when the wastes are applied to the land in a beneficial manner, application  
30 rates are based on agronomic uptake of applied nutrients, and other parameters will not cause degradation;

1 (h) incidental leakage of water from a public water supply system, as defined in 75-6-102, or from  
2 a public sewage system, as defined in 75-6-102, utilizing best practicable control technology designed and  
3 constructed in accordance with Title 75, chapter 6;

4 (i) discharges of water from water well or monitoring well tests, hydrostatic pressure and leakage  
5 tests, or wastewater from the disinfection or flushing of water mains and storage reservoirs, conducted in  
6 accordance with department-approved water quality protection practices;

7 (j) oil and gas drilling, production, abandonment, plugging, and restoration activities performed in  
8 accordance with Title 82, chapter 10, or Title 82, chapter 11;

9 (k) short-term changes in existing water quality resulting from ordinary and everyday activities of  
10 humans or domesticated animals, including but not limited to:

11 (i) such recreational activities as boating, hiking, fishing, wading, swimming, and camping;

12 (ii) fording of streams or other bodies of water by vehicular or other means; and

13 (iii) drinking from or fording of streams or other bodies of water by livestock and other domesticated  
14 animals;

15 (l) coal and uranium prospecting performed in accordance with Title 82, chapter 2;

16 (m) solid waste management systems, motor vehicle wrecking facilities, and county motor vehicle  
17 graveyards licensed and operating in accordance with Title 75, chapter 10, part 2, or Title 75, chapter 10,  
18 part 5;

19 (n) hazardous waste management facilities permitted and operated in accordance with Title 75,  
20 chapter 10, part 4;

21 (o) nonpoint sources of pollution that cause short-term changes in existing water quality resulting  
22 from:

23 (i) activities authorized under Title 75, chapter 7, part 1; or

24 (ii) customary activities involving the use of water established by an existing water right or permit  
25 recognized under Montana law; and

26 (p) any other activity that is nonsignificant because of its low potential for harm to human health  
27 or to the environment and its conformance with the guidance found in 75-5-301(5)(c).

28  
29 **NEW SECTION. Section 7. Codification instruction.** [Sections 2, 3, and 6] are intended to be  
30 codified as an integral part of Title 75, chapter 5, part 3, and the provisions of Title 75, chapter 5, part 3,

1 apply to [sections 2, 3, and 6].

2

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0371, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act defining "outstanding resource waters" and identifying certain state waters as outstanding resource waters.

ASSUMPTIONS:

1. Based on the fact that petitioning for designation as outstanding resource waters has been possible since 1988, and this bill makes the process more restrictive, it is assumed that few, if any, petitions for designation as outstanding resource waters will be filed in the future.

FISCAL IMPACT:

Passage of SB371 will have no fiscal impact on state government.

Dave Lewis 2-17-95  
DAVE LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

Lorents Grosfield 2-17-95  
LORENTS GROSFIELD, PRIMARY SPONSOR DATE  
Fiscal Note for SB0371, as introduced

**SB 371**

## 1 SENATE BILL NO. 371

2 INTRODUCED BY GROSSFIELD

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4 A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING "OUTSTANDING RESOURCE WATERS"; IDENTIFYING  
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6 STATE CLASSIFICATION OF OTHER WATERS AS OUTSTANDING RESOURCE WATERS; IDENTIFYING  
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16 only if there is no other reasonable means of protecting the water. The legislature intends that because  
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28 (3) "Council" means the water pollution control advisory council provided for in 2-15-2107.

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30 for a parameter. The term does not include those changes in water quality determined to be nonsignificant

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6 (7) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations  
7 of chemical, physical, biological, and other constituents which are discharged into state waters.

8 (8) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971,  
9 whether or not those uses are included in the water quality standards.

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11 standards established pursuant to 75-5-301. All waters are high-quality water unless classified by the  
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13 growth and propagation of fish and associated aquatic life.

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17 department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term  
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19 (12) "Local department of health" means the staff, including health officers, employed by a county,  
20 city, city-county, or district board of health.

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22 by the department where water quality standards may be exceeded, subject to conditions that are imposed  
23 by the department and that are consistent with the rules adopted by the board.

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25 lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or  
26 discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state  
27 waters.

28 (15) "Outstanding resource waters" means:

29 (a) state surface waters located in WHOLLY WITHIN THE BOUNDARIES OF areas designated as  
30 national parks or national wilderness areas as of [the effective date of this act]; or

1           **(b) other surface waters or ground waters classified by the board under the provisions of [section**  
2 **3] and approved by the legislature.**

3           **(16)** "Owner or operator" means a person who owns, leases, operates, controls, or supervises a  
4 point source.

5           ~~(16)~~**(17)** "Parameter" means a physical, biological, or chemical property of state water when a value  
6 of that property affects the quality of the state water.

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8 partnership, individual, or other entity and includes persons resident in Canada.

9           ~~(18)~~**(19)** "Point source" means a discernible, confined, and discrete conveyance, including but not  
10 limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel  
11 or other floating craft, from which pollutants are or may be discharged.

12           ~~(19)~~**(20)** "Pollution" means contamination or other alteration of the physical, chemical, or biological  
13 properties of state waters which exceeds that permitted by Montana water quality standards, including but  
14 not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or the discharge,  
15 seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance into state  
16 water which will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to  
17 public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife. A discharge,  
18 seepage, drainage, infiltration or flow which is authorized under the pollution discharge permit rules of the  
19 board is not pollution under this chapter. Activities conducted under the conditions imposed by the  
20 department in short-term authorizations pursuant to 75-5-308 are not considered pollution under this  
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22           ~~(20)~~**(21)** "Sewage" means water-carried waste products from residences, public buildings,  
23 institutions, or other buildings, including discharge from human beings or animals, together with ground  
24 water infiltration and surface water present.

25           ~~(21)~~**(22)** "Sewage system" means a device for collecting or conducting sewage, industrial wastes,  
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30 alternatives, including, where practicable, a standard permitting no discharge of pollutants.

1           ~~(23)~~(24) "State waters" means a body of water, irrigation system, or drainage system, either  
 2 surface or underground; however, this subsection does not apply to irrigation waters where the waters are  
 3 used up within the irrigation system and the waters are not returned to any other state waters.

4           ~~(24)~~(25) "Treatment works" means works, including sewage lagoons, installed for treating or  
 5 holding sewage, industrial wastes, or other wastes.

6           ~~(25)~~(26) "Water quality protection practices" means those activities, prohibitions, maintenance  
 7 procedures, or other management practices applied to point and nonpoint sources designed to protect,  
 8 maintain, and improve the quality of state waters. Water quality protection practices include but are not  
 9 limited to treatment requirements, standards of performance, effluent standards, and operating procedures  
 10 and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material  
 11 storage.

12           ~~(26)~~(27) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug,  
 13 jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition  
 14 of ground water."  
 15

16           NEW SECTION. **Section 2. Outstanding resource waters -- statement of purpose.** (1) The  
 17 legislature, understanding the requirements of applicable federal law and the uniqueness of Montana's water  
 18 resource, recognizes that certain state waters are of such environmental, ecological, or economic value that  
 19 the state should prohibit, to the greatest extent practicable, changes to the existing water quality of those  
 20 waters. Outstanding resource waters must be afforded the greatest protection feasible under state law,  
 21 after thorough examination.

22           (2) The purpose of this section and [section 3] is to provide this protection and to provide guidance  
 23 to the board in establishing rules to accomplish that level of protection.  
 24

25           NEW SECTION. **Section 3. Outstanding resource water classification -- rules -- criteria -- limitations**  
 26 **-- procedure.** (1) As provided under the provisions of 75-5-301 and this section, the board may adopt rules  
 27 regarding the classification of waters as outstanding resource waters. Neither this section nor rules  
 28 adopted pursuant to this section apply to an activity that is identified as nonsignificant under 75-5-301(5)(c)  
 29 and that is exempted from nondegradation review required under 75-5-303.

30           (2) The department may not:



1 (a) grant an authorization to degrade under 75-5-303 in outstanding resource waters; or

2 (b) grant an authorization to degrade if that authorization would cause significant degradation, as  
3 defined by board rules adopted under 75-5-301(5), in outstanding resource waters.

4 (3) (a) A person may petition the board for rulemaking to classify waters as outstanding resource  
5 waters. The board shall initially review a petition against the criteria identified in subsection (3)(c) to  
6 determine whether the petition contains sufficient credible information for the board to accept the petition.

7 (b) The board may reject a petition without further review if it determines that the petition does  
8 not contain the sufficient credible information required by subsection (3)(a). If the board rejects a petition  
9 under this subsection (3)(b), it shall specify in writing the reasons for the rejection and the petition's  
10 deficiencies.

11 (c) The board may not adopt a rule classifying state waters as outstanding resource waters until  
12 it accepts a petition and finds that, based on a preponderance of the evidence:

13 (i) the waters identified in the petition constitute an outstanding resource based on the criteria  
14 provided in subsection (4);

15 (ii) the classification is necessary to protect the outstanding resource identified under subsection  
16 (3)(a); and

17 (iii) there is no other effective process available that will achieve the necessary protection.

18 (4) The board shall consider the following criteria in determining whether certain state waters are  
19 outstanding resource waters. However, the board may determine that compliance with one or more of  
20 these criteria is insufficient to warrant classification of the water as an outstanding resource water. The  
21 board shall consider:

22 (a) whether the waters have been designated as wild and scenic;

23 (b) the presence of endangered or threatened species in the waters;

24 (c) the presence of an outstanding recreational fishery in the waters;

25 (d) whether the waters provide the only source of suitable water for a municipality or industry;

26 (e) whether the waters provide the only source of suitable water for domestic water supply; and

27 (f) other factors that indicate outstanding environmental or economic values not specifically  
28 mentioned in this subsection (4).

29 (5) After acceptance of a petition, the board shall require the preparation of an environmental  
30 impact statement, as provided under Title 75, chapter 1, part 2, when classification as an outstanding

1 resource water may cause significant adverse impacts to the environment, including significant adverse  
2 impacts to social or economic values.

3 (6) The board shall consult with other relevant state agencies when reviewing outstanding resource  
4 water classification petitions.

5 (7) (a) In accordance with 2-4-315, the board may deny an accepted outstanding resource water  
6 classification petition if it finds that:

7 (i) the requirements of subsection (3) have not been met; or

8 (ii) based on information available to the board from the environmental impact statement or  
9 otherwise, approving the outstanding resource waters classification petition would cause significant adverse  
10 environmental, social, or economic impacts.

11 (b) If the board denies the petition, it shall identify its reasons for petition denial.

12 (8) A rule classifying state waters as outstanding resource waters under this section may be  
13 adopted but is not effective until approved by the legislature.

14 (9) The board may not postpone or deny an application for an authorization to degrade state waters  
15 under 75-3-303 pending:

16 (a) board action on an outstanding resource water classification petition regarding those waters;

17 or

18 (b) legislative approval of board action designating those waters as outstanding resource waters.

19

20 **Section 4.** Section 75-5-301, MCA, is amended to read:

21 **"75-5-301. Classification and standards for state waters.** Consistent with the provisions of  
22 75-5-302 through 75-5-307 and 80-15-201, the board shall:

23 (1) establish and modify the classification of all waters in accordance with their present and future  
24 most beneficial uses;

25 (2) formulate standards of water purity and classification of water according to its most beneficial  
26 uses, giving consideration to the economics of waste treatment and prevention;

27 (3) review, from time to time at intervals of not more than 3 years, established classifications of  
28 waters and standards of water purity and classification;

29 (4) adopt rules governing the granting of mixing zones, requiring that mixing zones granted by the  
30 department be specifically identified, and requiring that mixing zones have:

1 (a) the smallest practicable size;  
2 (b) a minimum practicable effect on water uses; and  
3 (c) definable boundaries;  
4 (5) adopt rules implementing the nondegradation policy established in 75-5-303, including but not  
5 limited to rules that:

6 (a) provide a procedure for department review and authorization of degradation;

7 (b) establish criteria for the following:

8 (i) determining important economic or social development; and

9 (ii) weighing the social and economic importance to the public of allowing the proposed project  
10 against the cost to society associated with a loss of water quality; and

11 (c) establish criteria for determining whether a proposed activity or class of activities, in addition  
12 to those activities identified in [section 6], will result in nonsignificant changes in water quality for any  
13 parameter in order that those activities are not required to undergo review under 75-5-303(3). These  
14 criteria must be established in a manner that generally:

15 (i) equates significance with the potential for harm to human health or the environment;

16 (ii) considers both the quantity and the strength of the pollutant;

17 (iii) considers the length of time the degradation will occur; and

18 (iv) considers the character of the pollutant so that greater significance is associated with  
19 carcinogens and toxins that bioaccumulate or biomagnify and lesser significance is associated with  
20 substances that are less harmful or less persistent.

21 (6) to the extent practicable, ensure that the rules adopted under subsection (5) establish objective  
22 and quantifiable criteria for various parameters. These criteria must, to the extent practicable, constitute  
23 guidelines for granting or denying applications for authorization to degrade high-quality waters under the  
24 policy established in 75-5-303(2) and (3).

25 (7) adopt rules to implement this section."  
26

27 **Section 5.** Section 75-5-303, MCA, is amended to read:

28 **"75-5-303. Nondegradation policy.** (1) Existing uses of state waters and the level of water quality  
29 necessary to protect those uses must be maintained and protected.

30 (2) Unless authorized by the department under subsection (3) or exempted from review under

1 [section 6], the quality of high-quality waters must be maintained.

2 (3) The department may not authorize degradation of high-quality waters unless it has been  
3 affirmatively demonstrated by a preponderance of evidence to the department that:

4 (a) degradation is necessary because there are no economically, environmentally, and  
5 technologically feasible alternatives to the proposed project that would result in no degradation;

6 (b) the proposed project will result in important economic or social development that exceeds the  
7 benefit to society of maintaining existing high-quality waters and exceeds the costs to society of allowing  
8 degradation of high-quality waters;

9 (c) existing and anticipated use of state waters will be fully protected; and

10 (d) the least degrading water quality protection practices determined by the department to be  
11 economically, environmentally, and technologically feasible will be fully implemented by the applicant prior  
12 to and during the proposed activity.

13 (4) The department shall issue a preliminary decision either denying or authorizing degradation and  
14 shall provide public notice and a 30-day comment period prior to issuing a final decision. The department's  
15 preliminary and final decisions must include:

16 (a) a statement of the basis for the decision; and

17 (b) a detailed description of all conditions applied to any authorization to degrade state waters,  
18 including, when applicable, monitoring requirements, required water protection practices, reporting  
19 requirements, effluent limits, designation of the mixing zones, the limits of degradation authorized, and  
20 methods of determining compliance with the authorization for degradation.

21 (5) An interested person wishing to challenge a final department decision may request a hearing  
22 before the board within 30 days of the final department decision. The contested case procedures of Title  
23 2, chapter 4, part 6, apply to a hearing under this section.

24 (6) Every 5 years, the department shall review authorizations to degrade state waters. To enable  
25 the department to adequately review authorizations as required under this section, the authorization holder  
26 shall revise the initial authorization application no sooner than 3 1/2 years and no later than 4 years after  
27 the date of the authorization or the date of the latest department review. The specific revised information  
28 required must be determined by the department. If, based on the review, the department determines that  
29 the standards and objectives of 75-5-303 or the rules adopted pursuant to 75-5-303 are not being met, it  
30 shall revoke or modify the authorization. A decision by the department to revoke or modify an authorization

1 may be appealed to the board.

2 (7) The board may not issue an authorization to degrade state waters that are classified as  
3 outstanding resource waters.

4 (8) The board shall adopt rules to implement this section."  
5

6 NEW SECTION. Section 6. Nonsignificant activities. (1) The categories or classes of activities  
7 identified in subsection (2) cause changes in water quality that are nonsignificant because of their low  
8 potential for harm to human health or the environment and their conformance with the guidance found in  
9 75-5-301(5)(c).

10 (2) The following categories or classes of activities are not subject to the provisions of 75-3-303:

11 (A) EXISTING ACTIVITIES THAT ARE NONPOINT SOURCES OF POLLUTION AS OF APRIL 29,  
12 1993;

13 ~~(B)~~ activities that are nonpoint sources of pollution INITIATED AFTER APRIL 29, 1993, when  
14 reasonable land, soil, and water conservation practices are applied and existing and anticipated beneficial  
15 uses will be fully protected;

16 ~~(C)~~ use of agricultural chemicals in accordance with a specific agricultural chemical ground water  
17 management plan promulgated under 80-15-212, if applicable, or in accordance with an environmental  
18 protection agency-approved label and when existing and anticipated uses will be fully protected;

19 ~~(D)~~ changes in existing water quality resulting from an emergency or remedial activity that is  
20 designed to protect public health or the environment and is approved, authorized, or required by the  
21 department;

22 ~~(E)~~ changes in existing water quality resulting from treatment of a public water supply system,  
23 as defined in 75-6-102, or a public sewage system, as defined in 75-6-102, by chlorination or other similar  
24 means that is designed to protect the public health or the environment and that is approved, authorized,  
25 or required by the department;

26 ~~(F)~~ the use of drilling fluids, sealants, additives, disinfectants, and rehabilitation chemicals in  
27 water well or monitoring well drilling, development, or abandonment, if used according to  
28 department-approved water quality protection practices;

29 ~~(G)~~ short-term changes in existing water quality resulting from activities authorized by the  
30 department pursuant to 75-5-308;

1 ~~(g)~~(H) land application of animal waste, domestic septage, or waste from public sewage treatment  
 2 systems containing nutrients when the wastes are applied to the land in a beneficial manner, application  
 3 rates are based on agronomic uptake of applied nutrients, and other parameters will not cause degradation;

4 ~~(h)~~(I) incidental leakage of water from a public water supply system, as defined in 75-6-102, or  
 5 from a public sewage system, as defined in 75-6-102, utilizing best practicable control technology designed  
 6 and constructed in accordance with Title 75, chapter 6;

7 ~~(i)~~(J) discharges of water from water well or monitoring well tests, hydrostatic pressure and  
 8 leakage tests, or wastewater from the disinfection or flushing of water mains and storage reservoirs,  
 9 conducted in accordance with department-approved water quality protection practices;

10 ~~(j)~~(K) oil and gas drilling, production, abandonment, plugging, and restoration activities performed  
 11 in accordance with Title 82, chapter 10, or Title 82, chapter 11;

12 ~~(k)~~(L) short-term changes in existing water quality resulting from ordinary and everyday activities  
 13 of humans or domesticated animals, including but not limited to:

14 (i) such recreational activities as boating, hiking, fishing, wading, swimming, and camping;

15 (ii) fording of streams or other bodies of water by vehicular or other means; and

16 (iii) drinking from or fording of streams or other bodies of water by livestock and other domesticated  
 17 animals;

18 ~~(l)~~(M) coal and uranium prospecting performed in accordance with Title 82, chapter 2 ~~4~~;

19 ~~(m)~~(N) solid waste management systems, motor vehicle wrecking facilities, and county motor  
 20 vehicle graveyards licensed and operating in accordance with Title 75, chapter 10, part 2, or Title 75,  
 21 chapter 10, part 5;

22 ~~(n)~~(O) hazardous waste management facilities permitted and operated in accordance with Title 75,  
 23 chapter 10, part 4;

24 (P) METALLIC AND NONMETALLIC MINERAL EXPLORATION PERFORMED IN ACCORDANCE WITH  
 25 TITLE 82, CHAPTER 2, PARTS 3 AND 4;

26 ~~(o)~~(Q) nonpoint sources of pollution that cause short-term changes in existing water quality  
 27 resulting from:

28 (i) activities authorized under Title 75, chapter 7, part 1; or

29 (ii) customary activities involving the use of water established by an existing water right or permit  
 30 recognized under Montana law; ~~and~~



## 1 SENATE BILL NO. 371

2 INTRODUCED BY GROSSFIELD

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING "OUTSTANDING RESOURCE WATERS"; IDENTIFYING  
5 CERTAIN STATE WATERS AS OUTSTANDING RESOURCE WATERS; ESTABLISHING A PROCESS FOR  
6 STATE CLASSIFICATION OF OTHER WATERS AS OUTSTANDING RESOURCE WATERS; IDENTIFYING  
7 ACTIVITIES THAT ARE EXEMPT FROM THE WATER QUALITY NONDEGRADATION REVIEW PROCESS;  
8 AND AMENDING SECTIONS 75-5-103, 75-5-301, AND 75-5-303, MCA."  
9

## 10 STATEMENT OF INTENT

11 A statement of intent is required for this bill because the bill gives the ~~department~~ BOARD of health  
12 and environmental sciences the authority to adopt administrative rules. It is the intent of the legislature  
13 that this legislation and the rules adopted pursuant to this legislation serve as Montana's regulatory scheme  
14 for both outstanding national resource waters and outstanding state resource waters. It is the further intent  
15 of the legislature that surface and ground water in Montana be designated as outstanding resource waters  
16 only if there is no other reasonable means of protecting the water. The legislature intends that because  
17 this designation may severely limit future use of the designated water, the designation should be  
18 accomplished only after a very thorough examination of the environmental, social, and economic impacts.  
19

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

THERE ARE NO CHANGES IN THIS BILL AND IT WILL  
NOT BE REPRINTED. PLEASE REFER TO SECOND  
READING COPY (YELLOW) FOR COMPLETE TEXT.





## HOUSE STANDING COMMITTEE REPORT

March 22, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report that Senate Bill 371 (third reading copy -- blue) be concurred in as amended.

Signed: *Dick Knox*  
*Dick Knox, Chair*

And, that such amendments read:

Carried by: Rep. Curtiss

1. Page 6, line 15.  
Strike: "75-3-303"  
Insert: "75-5-303 based on"
2. Page 9, line 10.  
Strike: "75-3-303"  
Insert: "75-5-303"
3. Page 10, line 14.  
Following: "hiking,"  
Insert: "hunting,"
4. Page 10, line 24.  
Following: "EXPLORATION"  
Insert: "permitted under and"

-END-

Committee Vote:  
Yes 12, No 6.

**58371**  
**HOUSE**  
661026SC.Hdh

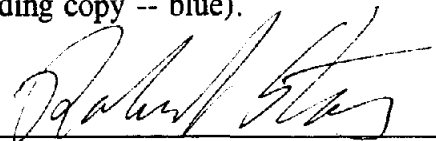


# HOUSE COMMITTEE OF THE WHOLE AMENDMENT

Senate Bill 371  
Representative Story

March 27, 1995 3:22 pm  
Page 1 of 1

Mr. Chairman: I move to amend Senate Bill 371 (third reading copy -- blue).

Signed:   
Representative Story

And, that such amendments to Senate Bill 371 read as follows:

1. Page 10, line 25.  
Strike: "2"  
Insert: "4"

-END-

ADOPT

REJECT

95-0

SB 371

HOUSE

## 1 SENATE BILL NO. 371

2 INTRODUCED BY GROSFIELD

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING "OUTSTANDING RESOURCE WATERS"; IDENTIFYING  
5 CERTAIN STATE WATERS AS OUTSTANDING RESOURCE WATERS; ESTABLISHING A PROCESS FOR  
6 STATE CLASSIFICATION OF OTHER WATERS AS OUTSTANDING RESOURCE WATERS; IDENTIFYING  
7 ACTIVITIES THAT ARE EXEMPT FROM THE WATER QUALITY NONDEGRADATION REVIEW PROCESS;  
8 AND AMENDING SECTIONS 75-5-103, 75-5-301, AND 75-5-303, MCA."  
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## 10 STATEMENT OF INTENT

11 A statement of intent is required for this bill because the bill gives the ~~department~~ BOARD of health  
12 and environmental sciences the authority to adopt administrative rules. It is the intent of the legislature  
13 that this legislation and the rules adopted pursuant to this legislation serve as Montana's regulatory scheme  
14 for both outstanding national resource waters and outstanding state resource waters. It is the further intent  
15 of the legislature that surface and ground water in Montana be designated as outstanding resource waters  
16 only if there is no other reasonable means of protecting the water. The legislature intends that because  
17 this designation may severely limit future use of the designated water, the designation should be  
18 accomplished only after a very thorough examination of the environmental, social, and economic impacts.  
19

20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
21

22 **Section 1.** Section 75-5-103, MCA, is amended to read:

23 **"75-5-103. Definitions.** Unless the context requires otherwise, in this chapter, the following  
24 definitions apply:

25 (1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

26 (2) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes,  
27 or other wastes, creating a hazard to human health.

28 (3) "Council" means the water pollution control advisory council provided for in 2-15-2107.

29 (4) "Degradation" means a change in water quality that lowers the quality of high-quality waters  
30 for a parameter. The term does not include those changes in water quality determined to be nonsignificant

1 pursuant to 75-5-301(5)(c).

2 (5) "Department" means the department of health and environmental sciences provided for in Title  
3 2, chapter 15, part 21.

4 (6) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and  
5 includes sewage systems and treatment works.

6 (7) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations  
7 of chemical, physical, biological, and other constituents which are discharged into state waters.

8 (8) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971,  
9 whether or not those uses are included in the water quality standards.

10 (9) "High-quality waters" means state waters whose quality for a parameter is better than  
11 standards established pursuant to 75-5-301. All waters are high-quality water unless classified by the  
12 board within a classification for waters that are not suitable for human consumption or not suitable for  
13 growth and propagation of fish and associated aquatic life.

14 (10) "Industrial waste" means a waste substance from the process of business or industry or from  
15 the development of any natural resource, together with any sewage that may be present.

16 (11) "Interested person" means a person who has submitted oral or written comments on the  
17 department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term  
18 includes a person who has requested authorization to degrade high-quality waters.

19 (12) "Local department of health" means the staff, including health officers, employed by a county,  
20 city, city-county, or district board of health.

21 (13) "Mixing zone" means an area established in a permit or final decision on nondegradation issued  
22 by the department where water quality standards may be exceeded, subject to conditions that are imposed  
23 by the department and that are consistent with the rules adopted by the board.

24 (14) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark,  
25 lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or  
26 discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state  
27 waters.

28 (15) "Outstanding resource waters" means:

29 (a) state surface waters located in WHOLLY WITHIN THE BOUNDARIES OF areas designated as  
30 national parks or national wilderness areas as of [the effective date of this act]; or

1            (b) other surface waters or ground waters classified by the board under the provisions of [section  
2 3] and approved by the legislature.

3            (16) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a  
4 point source.

5            ~~(16)~~(17) "Parameter" means a physical, biological, or chemical property of state water when a value  
6 of that property affects the quality of the state water.

7            ~~(17)~~(18) "Person" means the state, a political subdivision of the state, institution, firm, corporation,  
8 partnership, individual, or other entity and includes persons resident in Canada.

9            ~~(18)~~(19) "Point source" means a discernible, confined, and discrete conveyance, including but not  
10 limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel  
11 or other floating craft, from which pollutants are or may be discharged.

12            ~~(19)~~(20) "Pollution" means contamination or other alteration of the physical, chemical, or biological  
13 properties of state waters which exceeds that permitted by Montana water quality standards, including but  
14 not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or the discharge,  
15 seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance into state  
16 water which will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to  
17 public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife. A discharge,  
18 seepage, drainage, infiltration or flow which is authorized under the pollution discharge permit rules of the  
19 board is not pollution under this chapter. Activities conducted under the conditions imposed by the  
20 department in short-term authorizations pursuant to 75-5-308 are not considered pollution under this  
21 chapter.

22            ~~(20)~~(21) "Sewage" means water-carried waste products from residences, public buildings,  
23 institutions, or other buildings, including discharge from human beings or animals, together with ground  
24 water infiltration and surface water present.

25            ~~(21)~~(22) "Sewage system" means a device for collecting or conducting sewage, industrial wastes,  
26 or other wastes to an ultimate disposal point.

27            ~~(22)~~(23) "Standard of performance" means a standard adopted by the board for the control of the  
28 discharge of pollutants which reflects the greatest degree of effluent reduction achievable through  
29 application of the best available demonstrated control technology, processes, operating methods, or other  
30 alternatives, including, where practicable, a standard permitting no discharge of pollutants.

1           ~~(23)~~(24) "State waters" means a body of water, irrigation system, or drainage system, either  
2 surface or underground; however, this subsection does not apply to irrigation waters where the waters are  
3 used up within the irrigation system and the waters are not returned to any other state waters.

4           ~~(24)~~(25) "Treatment works" means works, including sewage lagoons, installed for treating or  
5 holding sewage, industrial wastes, or other wastes.

6           ~~(25)~~(26) "Water quality protection practices" means those activities, prohibitions, maintenance  
7 procedures, or other management practices applied to point and nonpoint sources designed to protect,  
8 maintain, and improve the quality of state waters. Water quality protection practices include but are not  
9 limited to treatment requirements, standards of performance, effluent standards, and operating procedures  
10 and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material  
11 storage.

12           ~~(26)~~(27) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug,  
13 jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition  
14 of ground water."

15

16           **NEW SECTION. Section 2. Outstanding resource waters -- statement of purpose.** (1) The  
17 legislature, understanding the requirements of applicable federal law and the uniqueness of Montana's water  
18 resource, recognizes that certain state waters are of such environmental, ecological, or economic value that  
19 the state should prohibit, to the greatest extent practicable, changes to the existing water quality of those  
20 waters. Outstanding resource waters must be afforded the greatest protection feasible under state law,  
21 after thorough examination.

22           (2) The purpose of this section and [section 3] is to provide this protection and to provide guidance  
23 to the board in establishing rules to accomplish that level of protection.

24

25           **NEW SECTION. Section 3. Outstanding resource water classification -- rules -- criteria -- limitations**  
26 **-- procedure.** (1) As provided under the provisions of 75-5-301 and this section, the board may adopt rules  
27 regarding the classification of waters as outstanding resource waters. Neither this section nor rules  
28 adopted pursuant to this section apply to an activity that is identified as nonsignificant under 75-5-301(5)(c)  
29 and that is exempted from nondegradation review required under 75-5-303.

30           (2) The department may not:

- 1 (a) grant an authorization to degrade under 75-5-303 in outstanding resource waters; or
- 2 (b) grant an authorization to degrade if that authorization would cause significant degradation, as
- 3 defined by board rules adopted under 75-5-301(5), in outstanding resource waters.
- 4 (3) (a) A person may petition the board for rulemaking to classify waters as outstanding resource
- 5 waters. The board shall initially review a petition against the criteria identified in subsection (3)(c) to
- 6 determine whether the petition contains sufficient credible information for the board to accept the petition.
- 7 (b) The board may reject a petition without further review if it determines that the petition does
- 8 not contain the sufficient credible information required by subsection (3)(a). If the board rejects a petition
- 9 under this subsection (3)(b), it shall specify in writing the reasons for the rejection and the petition's
- 10 deficiencies.
- 11 (c) The board may not adopt a rule classifying state waters as outstanding resource waters until
- 12 it accepts a petition and finds that, based on a preponderance of the evidence:
- 13 (i) the waters identified in the petition constitute an outstanding resource based on the criteria
- 14 provided in subsection (4);
- 15 (ii) the classification is necessary to protect the outstanding resource identified under subsection
- 16 (3)(a); and
- 17 (iii) there is no other effective process available that will achieve the necessary protection.
- 18 (4) The board shall consider the following criteria in determining whether certain state waters are
- 19 outstanding resource waters. However, the board may determine that compliance with one or more of
- 20 these criteria is insufficient to warrant classification of the water as an outstanding resource water. The
- 21 board shall consider:
- 22 (a) whether the waters have been designated as wild and scenic;
- 23 (b) the presence of endangered or threatened species in the waters;
- 24 (c) the presence of an outstanding recreational fishery in the waters;
- 25 (d) whether the waters provide the only source of suitable water for a municipality or industry;
- 26 (e) whether the waters provide the only source of suitable water for domestic water supply; and
- 27 (f) other factors that indicate outstanding environmental or economic values not specifically
- 28 mentioned in this subsection (4).
- 29 (5) After acceptance of a petition, the board shall require the preparation of an environmental
- 30 impact statement, as provided under Title 75, chapter 1, part 2, when classification as an outstanding

1 resource water may cause significant adverse impacts to the environment, including significant adverse  
2 impacts to social or economic values.

3 (6) The board shall consult with other relevant state agencies when reviewing outstanding resource  
4 water classification petitions.

5 (7) (a) In accordance with 2-4-315, the board may deny an accepted outstanding resource water  
6 classification petition if it finds that:

7 (i) the requirements of subsection (3) have not been met; or

8 (ii) based on information available to the board from the environmental impact statement or  
9 otherwise, approving the outstanding resource waters classification petition would cause significant adverse  
10 environmental, social, or economic impacts.

11 (b) If the board denies the petition, it shall identify its reasons for petition denial.

12 (8) A rule classifying state waters as outstanding resource waters under this section may be  
13 adopted but is not effective until approved by the legislature.

14 (9) The board may not postpone or deny an application for an authorization to degrade state waters  
15 under ~~75-3-303~~ 75-5-303 BASED ON pending:

16 (a) board action on an outstanding resource water classification petition regarding those waters;

17 or

18 (b) legislative approval of board action designating those waters as outstanding resource waters.

19

20 **Section 4.** Section 75-5-301, MCA, is amended to read:

21 **"75-5-301. Classification and standards for state waters.** Consistent with the provisions of  
22 75-5-302 through 75-5-307 and 80-15-201, the board shall:

23 (1) establish and modify the classification of all waters in accordance with their present and future  
24 most beneficial uses;

25 (2) formulate standards of water purity and classification of water according to its most beneficial  
26 uses, giving consideration to the economics of waste treatment and prevention;

27 (3) review, from time to time at intervals of not more than 3 years, established classifications of  
28 waters and standards of water purity and classification;

29 (4) adopt rules governing the granting of mixing zones, requiring that mixing zones granted by the  
30 department be specifically identified, and requiring that mixing zones have:



- 1 (a) the smallest practicable size;
- 2 (b) a minimum practicable effect on water uses; and
- 3 (c) definable boundaries;
- 4 (5) adopt rules implementing the nondegradation policy established in 75-5-303, including but not
- 5 limited to rules that:
- 6 (a) provide a procedure for department review and authorization of degradation;
- 7 (b) establish criteria for the following:
- 8 (i) determining important economic or social development; and
- 9 (ii) weighing the social and economic importance to the public of allowing the proposed project
- 10 against the cost to society associated with a loss of water quality; and
- 11 (c) establish criteria for determining whether a proposed activity or class of activities, in addition
- 12 to those activities identified in [section 6], will result in nonsignificant changes in water quality for any
- 13 parameter in order that those activities are not required to undergo review under 75-5-303(3). These
- 14 criteria must be established in a manner that generally:
- 15 (i) equates significance with the potential for harm to human health or the environment;
- 16 (ii) considers both the quantity and the strength of the pollutant;
- 17 (iii) considers the length of time the degradation will occur; and
- 18 (iv) considers the character of the pollutant so that greater significance is associated with
- 19 carcinogens and toxins that bioaccumulate or biomagnify and lesser significance is associated with
- 20 substances that are less harmful or less persistent.
- 21 (6) to the extent practicable, ensure that the rules adopted under subsection (5) establish objective
- 22 and quantifiable criteria for various parameters. These criteria must, to the extent practicable, constitute
- 23 guidelines for granting or denying applications for authorization to degrade high-quality waters under the
- 24 policy established in 75-5-303(2) and (3).
- 25 (7) adopt rules to implement this section."
- 26

27 **Section 5.** Section 75-5-303, MCA, is amended to read:

28 **"75-5-303. Nondegradation policy.** (1) Existing uses of state waters and the level of water quality

29 necessary to protect those uses must be maintained and protected.

30 (2) Unless authorized by the department under subsection (3) or exempted from review under

1 [section 6], the quality of high-quality waters must be maintained.

2 (3) The department may not authorize degradation of high-quality waters unless it has been  
3 affirmatively demonstrated by a preponderance of evidence to the department that:

4 (a) degradation is necessary because there are no economically, environmentally, and  
5 technologically feasible alternatives to the proposed project that would result in no degradation;

6 (b) the proposed project will result in important economic or social development that exceeds the  
7 benefit to society of maintaining existing high-quality waters and exceeds the costs to society of allowing  
8 degradation of high-quality waters;

9 (c) existing and anticipated use of state waters will be fully protected; and

10 (d) the least degrading water quality protection practices determined by the department to be  
11 economically, environmentally, and technologically feasible will be fully implemented by the applicant prior  
12 to and during the proposed activity.

13 (4) The department shall issue a preliminary decision either denying or authorizing degradation and  
14 shall provide public notice and a 30-day comment period prior to issuing a final decision. The department's  
15 preliminary and final decisions must include:

16 (a) a statement of the basis for the decision; and

17 (b) a detailed description of all conditions applied to any authorization to degrade state waters,  
18 including, when applicable, monitoring requirements, required water protection practices, reporting  
19 requirements, effluent limits, designation of the mixing zones, the limits of degradation authorized, and  
20 methods of determining compliance with the authorization for degradation.

21 (5) An interested person wishing to challenge a final department decision may request a hearing  
22 before the board within 30 days of the final department decision. The contested case procedures of Title  
23 2, chapter 4, part 6, apply to a hearing under this section.

24 (6) Every 5 years, the department shall review authorizations to degrade state waters. To enable  
25 the department to adequately review authorizations as required under this section, the authorization holder  
26 shall revise the initial authorization application no sooner than 3 1/2 years and no later than 4 years after  
27 the date of the authorization or the date of the latest department review. The specific revised information  
28 required must be determined by the department. If, based on the review, the department determines that  
29 the standards and objectives of 75-5-303 or the rules adopted pursuant to 75-5-303 are not being met, it  
30 shall revoke or modify the authorization. A decision by the department to revoke or modify an authorization

1 may be appealed to the board.

2 (7) The board may not issue an authorization to degrade state waters that are classified as  
3 outstanding resource waters.

4 (8) The board shall adopt rules to implement this section."  
5

6 **NEW SECTION. Section 6. Nonsignificant activities.** (1) The categories or classes of activities  
7 identified in subsection (2) cause changes in water quality that are nonsignificant because of their low  
8 potential for harm to human health or the environment and their conformance with the guidance found in  
9 75-5-301(5)(c).

10 (2) The following categories or classes of activities are not subject to the provisions of ~~75-3-303~~  
11 75-5-303:

12 (A) EXISTING ACTIVITIES THAT ARE NONPOINT SOURCES OF POLLUTION AS OF APRIL 29,  
13 1993;

14 ~~(b)~~(B) activities that are nonpoint sources of pollution INITIATED AFTER APRIL 29, 1993, when  
15 reasonable land, soil, and water conservation practices are applied and existing and anticipated beneficial  
16 uses will be fully protected;

17 ~~(b)~~(C) use of agricultural chemicals in accordance with a specific agricultural chemical ground water  
18 management plan promulgated under 80-15-212, if applicable, or in accordance with an environmental  
19 protection agency-approved label and when existing and anticipated uses will be fully protected;

20 ~~(e)~~(D) changes in existing water quality resulting from an emergency or remedial activity that is  
21 designed to protect public health or the environment and is approved, authorized, or required by the  
22 department;

23 ~~(e)~~(E) changes in existing water quality resulting from treatment of a public water supply system,  
24 as defined in 75-6-102, or a public sewage system, as defined in 75-6-102, by chlorination or other similar  
25 means that is designed to protect the public health or the environment and that is approved, authorized,  
26 or required by the department;

27 ~~(e)~~(F) the use of drilling fluids, sealants, additives, disinfectants, and rehabilitation chemicals in  
28 water well or monitoring well drilling, development, or abandonment, if used according to  
29 department-approved water quality protection practices;

30 ~~(f)~~(G) short-term changes in existing water quality resulting from activities authorized by the

1 department pursuant to 75-5-308;

2 ~~(g)~~(H) land application of animal waste, domestic septage, or waste from public sewage treatment  
3 systems containing nutrients when the wastes are applied to the land in a beneficial manner, application  
4 rates are based on agronomic uptake of applied nutrients, and other parameters will not cause degradation;

5 ~~(h)~~(I) incidental leakage of water from a public water supply system, as defined in 75-6-102, or  
6 from a public sewage system, as defined in 75-6-102, utilizing best practicable control technology designed  
7 and constructed in accordance with Title 75, chapter 6;

8 ~~(i)~~(J) discharges of water from water well or monitoring well tests, hydrostatic pressure and  
9 leakage tests, or wastewater from the disinfection or flushing of water mains and storage reservoirs,  
10 conducted in accordance with department-approved water quality protection practices;

11 ~~(j)~~(K) oil and gas drilling, production, abandonment, plugging, and restoration activities performed  
12 in accordance with Title 82, chapter 10, or Title 82, chapter 11;

13 ~~(k)~~(L) short-term changes in existing water quality resulting from ordinary and everyday activities  
14 of humans or domesticated animals, including but not limited to:

15 (i) such recreational activities as boating, hiking, HUNTING, fishing, wading, swimming, and  
16 camping;

17 (ii) fording of streams or other bodies of water by vehicular or other means; and

18 (iii) drinking from or fording of streams or other bodies of water by livestock and other domesticated  
19 animals;

20 ~~(l)~~(M) coal and uranium prospecting performed in accordance with Title 82, chapter ~~2~~ 4;

21 ~~(m)~~(N) solid waste management systems, motor vehicle wrecking facilities, and county motor  
22 vehicle graveyards licensed and operating in accordance with Title 75, chapter 10, part 2, or Title 75,  
23 chapter 10, part 5;

24 ~~(n)~~(O) hazardous waste management facilities permitted and operated in accordance with Title 75,  
25 chapter 10, part 4;

26 (P) METALLIC AND NONMETALLIC MINERAL EXPLORATION PERMITTED UNDER AND  
27 PERFORMED IN ACCORDANCE WITH TITLE 82, CHAPTER ~~2~~ 4, PARTS 3 AND 4;

28 ~~(o)~~(Q) nonpoint sources of pollution that cause short-term changes in existing water quality  
29 resulting from:

30 (i) activities authorized under Title 75, chapter 7, part 1; or

1 (ii) customary activities involving the use of water established by an existing water right or permit  
2 recognized under Montana law; ~~and~~

3 (R) THE MAINTENANCE, REPAIR, OR REPLACEMENT OF DAMS, DIVERSIONS, WEIRS, OR OTHER  
4 CONSTRUCTED WORKS THAT ARE RELATED TO EXISTING WATER RIGHTS AND THAT ARE WITHIN  
5 WILDERNESS AREAS SO LONG AS EXISTING AND ANTICIPATED BENEFICIAL USES ARE PROTECTED  
6 AND AS LONG AS THE CHANGES IN EXISTING WATER QUALITY RELATIVE TO THE PROJECT ARE  
7 SHORT TERM; AND

8 ~~(p)~~(S) any other activity that is nonsignificant because of its low potential for harm to human health  
9 or to the environment and its conformance with the guidance found in 75-5-301(5)(c).

10

11 NEW SECTION. Section 7. Codification instruction. [Sections 2, 3, and 6] are intended to be  
12 codified as an integral part of Title 75, chapter 5, part 3, and the provisions of Title 75, chapter 5, part 3,  
13 apply to [sections 2, 3, and 6].

14

-END-