

1
 2 INTRODUCTION BY House BILL NO. 546
 3 Eric Groff Eric Groff Eric Groff HARP
 4 Mercer

5 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE WATER QUALITY LAWS TO FURTHER DIRECT
 6 THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO MONITOR STATE WATERS TO ASSESS THEIR
 7 QUALITY AND TO DEVELOP TOTAL MAXIMUM DAILY LOADS FOR THOSE WATERS IDENTIFIED AS
 8 THREATENED OR IMPAIRED; AMENDING SECTION 75-5-103, MCA; AND PROVIDING AN IMMEDIATE
 9 EFFECTIVE DATE."

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

11
 12 **Section 1.** Section 75-5-103, MCA, is amended to read:

13 **"75-5-103. Definitions.** Unless the context requires otherwise, in this chapter, the following
 14 definitions apply:

- 15 (1) "Board" means the board of environmental review provided for in 2-15-3502.
- 16 (2) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes,
 17 or other wastes, creating a hazard to human health.
- 18 (3) "Council" means the water pollution control advisory council provided for in 2-15-2107.
- 19 (4) (a) "Currently available data" means data that is readily available to the department at the time
 20 a decision is made, including information supporting its previous lists of water bodies that are threatened
 21 or impaired.
- 22 (b) The term does not mean new data to be obtained as a result of department efforts.
- 23 ~~(4)(5)~~ "Degradation" means a change in water quality that lowers the quality of high-quality waters
 24 for a parameter. The term does not include those changes in water quality determined to be nonsignificant
 25 pursuant to 75-5-301(5)(c).
- 26 ~~(5)(6)~~ "Department" means the department of environmental quality provided for in 2-15-3501.
- 27 ~~(6)(7)~~ "Disposal system" means a system for disposing of sewage, industrial, or other wastes and
 28 includes sewage systems and treatment works.
- 29 ~~(7)(8)~~ "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations
 30 of chemical, physical, biological, and other constituents that are discharged into state waters.

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

3 ~~(9)~~(10) "High-quality waters" means all state waters, except:

4 (a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established
5 by the board's classification rules; and

6 (b) surface waters that:

7 (i) are not capable of supporting any one of the designated uses for their classification; or

8 (ii) have zero flow or surface expression for more than 270 days during most years.

9 (11) "Impaired water body" means a water body for which sufficient credible data shows that the
10 water body is failing to achieve compliance with applicable water quality standards.

11 ~~(10)~~(12) "Industrial waste" means a waste substance from the process of business or industry or
12 from the development of any natural resource, together with any sewage that may be present.

13 ~~(11)~~(13) "Interested person" means a person who has a real property interest, a water right, or an
14 economic interest that is or may be directly and adversely affected by the department's preliminary decision
15 regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has
16 requested authorization to degrade high-quality waters.

17 (14) "Load allocation" means the portion of a receiving water's loading capacity that is allocated
18 to one of its existing or future nonpoint sources or to natural background sources.

19 (15) "Loading capacity" means the mass of a pollutant that a water body can assimilate without
20 a violation of water quality standards. For pollutants that cannot be measured in terms of mass, it means
21 the maximum change that can occur from the best practicable condition in a surface water without causing
22 a violation of the surface water quality standards.

23 ~~(12)~~(16) "Local department of health" means the staff, including health officers, employed by a
24 county, city, city-county, or district board of health.

25 ~~(13)~~(17) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium,
26 barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver,
27 thallium, and zinc.

28 ~~(14)~~(18) "Mixing zone" means an area established in a permit or final decision on nondegradation
29 issued by the department where water quality standards may be exceeded, subject to conditions that are
30 imposed by the department and that are consistent with the rules adopted by the board.

1 ~~(15)~~(19) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark,
2 lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or
3 discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state
4 waters.

5 ~~(16)~~(20) "Outstanding resource waters" means:

6 (a) state surface waters located wholly within the boundaries of areas designated as national parks
7 or national wilderness areas as of October 1, 1995; or

8 (b) other surface waters or ground waters classified by the board under the provisions of 75-5-316
9 and approved by the legislature.

10 ~~(17)~~(21) "Owner or operator" means a person who owns, leases, operates, controls, or supervises
11 a point source.

12 ~~(18)~~(22) "Parameter" means a physical, biological, or chemical property of state water when a value
13 of that property affects the quality of the state water.

14 ~~(19)~~(23) "Person" means the state, a political subdivision of the state, institution, firm, corporation,
15 partnership, individual, or other entity and includes persons resident in Canada.

16 ~~(20)~~(24) "Point source" means a discernible, confined, and discrete conveyance, including but not
17 limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel
18 or other floating craft, from which pollutants are or may be discharged.

19 ~~(21)~~(25) (a) "Pollution" means:

20 (i) contamination or other alteration of the physical, chemical, or biological properties of state
21 waters that exceeds that permitted by Montana water quality standards, including but not limited to
22 standards relating to change in temperature, taste, color, turbidity, or odor; or

23 (ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or
24 other substance into state water that will or is likely to create a nuisance or render the waters harmful,
25 detrimental, or injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals,
26 birds, fish, or other wildlife.

27 (b) A discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution
28 discharge permit rules of the board is not pollution under this chapter. Activities conducted under the
29 conditions imposed by the department in short-term authorizations pursuant to 75-5-308 are not considered
30 pollution under this chapter.

1 ~~(22)~~(26) "Sewage" means water-carried waste products from residences, public buildings,
2 institutions, or other buildings, including discharge from human beings or animals, together with ground
3 water infiltration and surface water present.

4 ~~(23)~~(27) "Sewage system" means a device for collecting or conducting sewage, industrial wastes,
5 or other wastes to an ultimate disposal point.

6 ~~(24)~~(28) "Standard of performance" means a standard adopted by the board for the control of the
7 discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application
8 of the best available demonstrated control technology, processes, operating methods, or other alternatives,
9 including, when practicable, a standard permitting no discharge of pollutants.

10 ~~(25)~~(29) (a) "State waters" means a body of water, irrigation system, or drainage system, either
11 surface or underground.

12 (b) The term does not apply to:

13 (i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

14 (ii) irrigation waters or land application disposal waters when the waters are used up within the
15 irrigation or land application disposal system and the waters are not returned to state waters.

16 (30) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in
17 combination with narrative information, that supports a finding that the water body is not achieving
18 compliance with applicable water quality standards.

19 (31) "Threatened water body" means a water body for which sufficient credible data and calculated
20 increases in loads show that the water body is fully supporting its designated uses but threatened for a
21 particular designated use because of:

22 (a) proposed sources that are not subject to pollution prevention or control actions required by a
23 discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices;
24 or

25 (b) documented adverse pollution trends.

26 (32) "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations
27 for point sources and load allocations for both nonpoint sources and natural background sources established
28 at a level necessary to achieve compliance with applicable surface water quality standards.

29 ~~(26)~~(33) "Treatment works" means works, including sewage lagoons, installed for treating or
30 holding sewage, industrial wastes, or other wastes.

1 (34) "Waste load allocation" means the portion of a receiving water's loading capacity that is
2 allocated to one of its existing or future point sources.

3 ~~(27)~~(35) "Water quality protection practices" means those activities, prohibitions, maintenance
4 procedures, or other management practices applied to point and nonpoint sources designed to protect,
5 maintain, and improve the quality of state waters. Water quality protection practices include but are not
6 limited to treatment requirements, standards of performance, effluent standards, and operating procedures
7 and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material
8 storage.

9 ~~(28)~~(36) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug,
10 jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition
11 of ground water.

12 (37) "Watershed advisory group" means a group of individuals who wish to participate in an
13 advisory capacity in revising and reprioritizing the list of water bodies developed under [section 3] and in
14 the development of TMDLs under [section 4], including those groups or individuals requested by the
15 department to participate in an advisory capacity as provided in [section 5]."

16
17 NEW SECTION. Section 2. Purpose. Consistent with the policy established in 75-5-101(2) to
18 provide a comprehensive program for the prevention, abatement, and control of water pollution, the
19 purpose of [sections 2 through 6] is to further direct the department to monitor state waters to accurately
20 assess their quality and, when required, to develop total maximum daily loads for those water bodies
21 identified as threatened or impaired.

22
23 NEW SECTION. Section 3. Monitoring -- water quality assessment listing. (1) The department
24 shall monitor state waters to assess the quality of those waters and to identify surface water bodies or
25 segments of surface water bodies that are threatened or impaired. The department shall use the monitoring
26 results to revise the list of water bodies that are identified as threatened or impaired and to establish a
27 priority ranking for TMDL development for those waters in accordance with subsections (4) and (7).

28 (2) In revising the list prepared pursuant to this section, the department shall use all currently
29 available data, including information or data obtained from federal, state, and local agencies, private
30 entities, or individuals with an interest in water quality protection. Except as provided in subsection (6),

1 the department may modify the list only if there is sufficient credible data to support the modification. Prior
2 to publishing a final list, the department shall provide public notice and allow 60 days for public comment
3 on the draft list. The department shall make available for public review, upon request, documentation used
4 in the determination to list a particular water body, including, at a minimum, a description of the
5 information, data, and methodology used. The department may charge a reasonable fee for the
6 documentation, commensurate with the cost of providing the documentation to the requestor.

7 (3) A person may request that the department add or remove a water body or reprioritize a water
8 body on a draft or published list by providing the data or information necessary to support the request. The
9 department shall review the data within 60 days from its submittal. If the department determines that there
10 is sufficient credible data to grant the request, the department shall provide public notice of its intended
11 action and allow 60 days for public comment prior to taking action on the request. A person aggrieved by
12 the department's decision to grant or deny the request may appeal the department's decision to the board.

13 (4) The department shall, in consultation with local conservation districts and watershed advisory
14 groups pursuant to [section 5], review and revise the list and priority rankings of water bodies identified
15 as threatened or impaired. The department shall review and revise the list at intervals not to exceed 5
16 years. The department shall make available for public review the data and information used in making any
17 changes in its list of threatened or impaired water bodies that is developed and maintained pursuant to this
18 section.

19 (5) By October 1, 1999, the department shall develop and maintain a data management system
20 that can be used to assess the validity and reliability of the data used in the listing and priority ranking
21 process. The department shall make available to the public, upon request, data from its data management
22 system. The department may charge a reasonable fee for the data, commensurate with its cost of
23 providing the data to the requestor.

24 (6) By October 1, 1999, the department shall use the data management system developed and
25 maintained pursuant to subsection (5) to revise the list and to remove any water body that lacks sufficient
26 credible data to support its listing. If the department removes a water body because there is a lack of
27 sufficient credible data to support its listing, the department shall monitor and assess that water body
28 during the next field season or as soon as possible thereafter to determine whether it is a threatened water
29 body or an impaired water body.

30 (7) In prioritizing water bodies for TMDL development, the department shall, in consultation with

1 the statewide TMDL advisory group established pursuant to subsection (9), take into consideration the
2 following:

3 (a) the beneficial uses established for a water body;

4 (b) the extent that natural factors over which humans have no control are contributing to any
5 impairment;

6 (c) the impacts to human health and aquatic life;

7 (d) the degree of public interest and support;

8 (e) the character of the pollutant and the severity and magnitude of water quality standard
9 noncompliance;

10 (f) whether the water body is an important high-quality resource in an early stage of degradation;

11 (g) the size of the water body not achieving standards;

12 (h) immediate programmatic needs such as waste load allocations for new permits or permit
13 renewals and load allocations for new nonpoint sources;

14 (i) court orders and decisions relating to water quality;

15 (j) state policies and priorities, including the protection and restoration of native fish when
16 appropriate;

17 (k) the availability of technology and resources to correct the problems;

18 (l) whether actions or voluntary programs that are likely to correct the impairment of a particular
19 water body are currently in place; and

20 (m) the recreational, economic, and aesthetic importance of a particular water body.

21 (8) The department shall, in consultation with the statewide TMDL advisory group, develop a
22 method of rating water bodies according to the criteria and considerations described in subsection (7) in
23 order to rank the listed water bodies as high priority, moderate priority, or low priority for TMDL
24 development. The department may not rank a water body as a high priority under this section without first
25 validating the data necessary to support the ranking.

26 (9) The department shall establish a statewide TMDL advisory group to serve in the consultation
27 capacity set forth in [section 5(2)(a)] and subsections (7) and (8) of this section. Twelve members must
28 be appointed by the director, based upon one nomination from each of the following:

29 (a) livestock-oriented agriculture;

30 (b) farming-oriented agriculture;

- 1 (c) conservation or environmental interests;
 2 (d) water-based recreationists;
 3 (e) the forestry industry;
 4 (f) municipalities;
 5 (g) point source dischargers;
 6 (h) mining;
 7 (i) federal land management agencies;
 8 (j) state trust land management agencies;
 9 (k) supervisors of soil and water conservation districts for counties east of the continental divide;
 10 and
 11 (l) supervisors of soil and water conservation districts for counties west of the continental divide.

12 (10) The department shall provide public notice of meetings of the statewide TMDL advisory group
 13 and shall solicit, document, and consider public comments provided during the deliberations of the advisory
 14 group.
 15

16 **NEW SECTION. Section 4. Development and implementation of total maximum daily loads.** (1)

17 The department shall, in consultation with local conservation districts and watershed advisory groups,
 18 develop total maximum daily loads or TMDLs for threatened or impaired water bodies or segments of water
 19 bodies in order of the priority ranking established by the department under [section 3]. Each TMDL must
 20 be established at a level that will achieve compliance with applicable water quality standards and must
 21 include a reasonable margin of safety that takes into account any lack of knowledge concerning the
 22 relationship between the TMDL and water quality standards. The department shall consider the
 23 environmental, economic, and social costs and benefits of developing and implementing a TMDL.

24 (2) In establishing TMDLs under subsection (1), the department shall consider applicable federal
 25 guidelines for establishing waste load allocations for point sources and load allocations for nonpoint
 26 sources, as well as for allowing effluent trading. The department shall, in consultation with local
 27 conservation districts and watershed advisory groups, develop reasonable land, soil, and water conservation
 28 practices specifically recognizing established practices and programs for nonpoint sources.

29 (3) Within 10 years from [the effective date of this act], the department shall develop TMDLs for
 30 all water bodies on the list of waters that are threatened or impaired, as that list reads on [the effective date

1 of this act]. This provision does not apply to water bodies that are subsequently added or removed from
2 the list according to the provisions of [section 3]. Within 1 year from [the effective date of this act], the
3 department shall establish a schedule for completing the TMDLs within the 10-year period established by
4 this subsection.

5 (4) The department shall provide guidance for TMDL development on any threatened or impaired
6 water body, regardless of its priority ranking, if the necessary funding and resources from sources outside
7 the department are available to develop the TMDL and to monitor the effectiveness of implementation
8 efforts. The department shall review the TMDL and either approve or disapprove the TMDL. If the TMDL
9 is approved by the department, the department shall ensure implementation of the TMDL according to the
10 provisions of subsections (6) through (8).

11 (5) For water bodies listed under [section 3], the department shall provide assistance and support
12 to landowners, local conservation districts, and watershed advisory groups for interim measures that may
13 restore water quality and remove the need to establish a TMDL, such as informational programs regarding
14 control of nonpoint source pollution and voluntary measures designed to correct impairments.

15 (6) After development of a TMDL and upon approval of the TMDL, the department shall:

16 (a) incorporate the TMDL into its current continuing planning process;

17 (b) incorporate the waste load allocation developed for point sources during the TMDL process into
18 appropriate water discharge permits; and

19 (c) assist and inform landowners regarding the application of a voluntary program of reasonable
20 land, soil, and water conservation practices developed pursuant to subsection (2).

21 (7) Once the control measures identified in subsection (6) have been implemented, the department
22 shall develop a monitoring program to assess the waters that are subject to the TMDL to determine whether
23 compliance with water quality standards has been attained for a particular water body or whether the water
24 body is no longer threatened. The monitoring program must be designed based on the specific impairments
25 or pollution sources. The department's monitoring program must include long-term monitoring efforts for
26 the analysis of the effectiveness of the control measures developed.

27 (8) The department shall support a voluntary program of reasonable land, soil, and water
28 conservation practices to achieve compliance with water quality standards for nonpoint source activities
29 for water bodies that are subject to a TMDL developed and implemented pursuant to this section.

30 (9) If the monitoring program provided under subsection (7) demonstrates that the TMDL is not

1 achieving compliance with applicable water quality standards within 5 years after approval of a TMDL, the
 2 department shall conduct a formal evaluation of progress in restoring water quality and the status of
 3 reasonable land, soil, and water conservation practice implementation to determine if:

4 (a) the implementation of a new or improved phase of voluntary reasonable land, soil, and water
 5 conservation practice is necessary;

6 (b) water quality is improving but a specified time is needed for compliance with water quality
 7 standards; or

8 (c) revisions to the TMDL are necessary to achieve applicable water quality standards.

9 (10) Pending completion of a TMDL on a water body listed pursuant to [section 3]:

10 (a) point source discharges to a listed water body may commence or continue, provided that:

11 (i) the discharge is in conformance with a discharge permit that reflects, in the manner and to the
 12 extent applicable for the particular discharge, the provisions of 75-5-303;

13 (ii) the discharge will not cause a decline in water quality for parameters by which the water body
 14 is impaired; and

15 (iii) minimum treatment requirements adopted pursuant to 75-5-305 are met;

16 (b) the issuance of a discharge permit may not be precluded because a TMDL is pending;

17 (c) new or expanded nonpoint source activities affecting a listed water body may commence and
 18 continue their activities provided those activities are conducted in accordance with reasonable land, soil,
 19 and water conservation practices;

20 (d) for existing nonpoint source activities, the department shall continue to utilize educational
 21 nonpoint source control programs and voluntary measures as provided in subsections (5) and (6).

22 (11) This section may not be construed to prevent a person from filing an application or petition
 23 under 75-5-302, 75-5-310, or 75-5-312.

24

25 **NEW SECTION. Section 5. Watershed advisory groups.** (1) In implementing the consultation
 26 requirements under [sections 3(4) and 4(1) and (2)], the department shall request the participation of
 27 representatives of the following interest groups to work in an advisory capacity with the local conservation
 28 districts and the department:

29 (a) livestock-oriented agriculture;

30 (b) farming-oriented agriculture;

- 1 (c) conservation or environmental interests;
2 (d) water-based recreationists;
3 (e) the forestry industry;
4 (f) municipalities;
5 (g) affected or potentially affected point source dischargers;
6 (h) mining;
7 (i) existing local watershed groups;
8 (j) federal land management agencies; and
9 (k) state trust land management agencies.

10 (2) In implementing the consultation requirements of [sections 3 and 4], the department shall:

11 (a) prior to consultation with the statewide TMDL advisory group pursuant to [section 2(7) and (8)],
12 schedule meetings with appropriate local conservation districts and the watershed advisory groups at a
13 location within their affected geographic area to review and revise the list of water bodies provided for in
14 [section 3]; and

15 (b) at a meeting held pursuant to subsection (2)(a), request whether there is new information that
16 may affect the listing or priority ranking on water bodies within the affected area and solicit comments on
17 revising the list.

18 (3) Based upon the information provided pursuant to subsection (2)(b), the department shall revise
19 the list according to [section 3].

20 (4) Prior to and during the development of a TMDL within a particular watershed or basin, the
21 department shall schedule a meeting or meetings with appropriate local conservation districts and
22 watershed advisory groups at a location within the affected geographic area in order to solicit comments
23 on developing the TMDL and information on sources that may be contributing to water quality impairment.
24

25 **NEW SECTION. Section 6. Nonimpairment of water rights.** [Sections 2 through 5] do not divest,
26 impair, or diminish any water right recognized pursuant to Title 85.

27
28 **NEW SECTION. Section 7. Codification instruction.** [Sections 2 through 6] are intended to be
29 codified as an integral part of Title 75, chapter 5, part 3, and the provisions of Title 75, chapter 5, part 3,
30 apply to [sections 2 through 6].

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0546, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act amending the water quality laws to further direct the Department of Environmental Quality to monitor state waters to assess their quality and to develop total maximum daily loads for those waters identified as threatened or impaired.

ASSUMPTIONS:

1. There are over 900 lakes, rivers, and streams in Montana that are threatened or not meeting water quality standards.
2. Total maximum daily loads will be developed for each of these waters over a ten year period, unless the water body is removed from the list of threatened or impaired water bodies. Since many of Montana's water bodies have not been assessed, lakes, rivers, and streams will be added to the list in the future. Development of total maximum daily loads for these water bodies will extend beyond the ten year period.
3. The DEQ will request an appropriation of \$687,543 for fiscal year 1998 and \$768,823 for fiscal year 1999 in HB 2 for development of total maximum daily loads. DEQ will request approval for six water quality specialists, one data management position, one administrative support position, and a project coordinator.
4. Partial funding (60%) for this program will be from federal funds transferred from the nonpoint source program funded under Section 319 of the Federal Clean Water Act (03249) which is currently being considered in HB 2. The remaining 40% will come from the state general fund.
5. If federal funding under Section 319 is not appropriated in HB 2, there will be \$687,543 in FY 98 and \$768,823 in FY 99 from the state general fund to support the program.

FISCAL IMPACT:

	<u>FY 98</u>	<u>FY 99</u>
<u>Expenditures:</u>	<u>Difference</u>	<u>Difference</u>
FTE	9.00	9.00
Personal Services	\$287,308	\$287,308
Operating Expenses	339,235	466,515
Equipment	<u>61,000</u>	<u>15,000</u>
Total	\$687,543	\$768,823
 <u>Funding</u>		
General Fund (01)	\$275,017	\$307,529
Federal Special Revenue (03)	<u>412,526</u>	<u>461,294</u>
Total	\$687,543	\$768,823

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

If this program is partially funded (60%) with federal funding transferred from the nonpoint source program, the amount of grant money available to local conservation districts for nonpoint source demonstration projects will be reduced.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

The total cost of the program will increase slowly until it reaches \$925,528 in the tenth year, and then it is expected to decrease.

David Lewis 2-17-97
 DAVID LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

 BILL TASH, PRIMARY SPONSOR DATE
 Fiscal Note for HB0546, as introduced
HB546

1 HOUSE BILL NO. 546

2 INTRODUCED BY TASH, GROSFIELD, KNOX, GRINDE, HARP, MERCER

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23 ~~(12)~~(16) "Local department of health" means the staff, including health officers, employed by a
24 county, city, city-county, or district board of health.

25 ~~(13)~~(17) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium,
26 barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver,
27 thallium, and zinc.

28 ~~(14)~~(18) "Mixing zone" means an area established in a permit or final decision on nondegradation
29 issued by the department where water quality standards may be exceeded, subject to conditions that are
30 imposed by the department and that are consistent with the rules adopted by the board.

1 ~~(16)~~(19) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark,
2 lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or
3 discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state
4 waters.

5 ~~(16)~~(20) "Outstanding resource waters" means:

6 (a) state surface waters located wholly within the boundaries of areas designated as national parks
7 or national wilderness areas as of October 1, 1995; or

8 (b) other surface waters or ground waters classified by the board under the provisions of 75-5-316
9 and approved by the legislature.

10 ~~(17)~~(21) "Owner or operator" means a person who owns, leases, operates, controls, or supervises
11 a point source.

12 ~~(18)~~(22) "Parameter" means a physical, biological, or chemical property of state water when a value
13 of that property affects the quality of the state water.

14 ~~(19)~~(23) "Person" means the state, a political subdivision of the state, institution, firm, corporation,
15 partnership, individual, or other entity and includes persons resident in Canada.

16 ~~(20)~~(24) "Point source" means a discernible, confined, and discrete conveyance, including but not
17 limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel
18 or other floating craft, from which pollutants are or may be discharged.

19 ~~(24)~~(25) (a) "Pollution" means:

20 (i) contamination or other alteration of the physical, chemical, or biological properties of state
21 waters that exceeds that permitted by Montana water quality standards, including but not limited to
22 standards relating to change in temperature, taste, color, turbidity, or odor; or

23 (ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or
24 other substance into state water that will or is likely to create a nuisance or render the waters harmful,
25 detrimental, or injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals,
26 birds, fish, or other wildlife.

27 (b) A discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution
28 discharge permit rules of the board is not pollution under this chapter. Activities conducted under the
29 conditions imposed by the department in short-term authorizations pursuant to 75-5-308 are not considered
30 pollution under this chapter.

1 ~~(22)~~(26) "Sewage" means water-carried waste products from residences, public buildings,
2 institutions, or other buildings, including discharge from human beings or animals, together with ground
3 water infiltration and surface water present.

4 ~~(23)~~(27) "Sewage system" means a device for collecting or conducting sewage, industrial wastes,
5 or other wastes to an ultimate disposal point.

6 ~~(24)~~(28) "Standard of performance" means a standard adopted by the board for the control of the
7 discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application
8 of the best available demonstrated control technology, processes, operating methods, or other alternatives,
9 including, when practicable, a standard permitting no discharge of pollutants.

10 ~~(25)~~(29) (a) "State waters" means a body of water, irrigation system, or drainage system, either
11 surface or underground.

12 (b) The term does not apply to:

13 (i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

14 (ii) irrigation waters or land application disposal waters when the waters are used up within the
15 irrigation or land application disposal system and the waters are not returned to state waters.

16 ~~(30)~~ "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in
17 combination with narrative information, that supports a finding that the water body is not achieving
18 compliance with applicable water quality standards.

19 ~~(31)~~ "Threatened water body" means a water body for which sufficient credible data and calculated
20 increases in loads show that the water body is fully supporting its designated uses but threatened for a
21 particular designated use because of:

22 ~~(a)~~ proposed sources that are not subject to pollution prevention or control actions required by a
23 discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices;
24 or

25 ~~(b)~~ documented adverse pollution trends.

26 ~~(32)~~ "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations
27 for point sources and load allocations for both nonpoint sources and natural background sources established
28 at a level necessary to achieve compliance with applicable surface water quality standards.

29 ~~(26)~~(33) "Treatment works" means works, including sewage lagoons, installed for treating or
30 holding sewage, industrial wastes, or other wastes.

1 (34) "Waste load allocation" means the portion of a receiving water's loading capacity that is
2 allocated to one of its existing or future point sources.

3 ~~(27)~~(35) "Water quality protection practices" means those activities, prohibitions, maintenance
4 procedures, or other management practices applied to point and nonpoint sources designed to protect,
5 maintain, and improve the quality of state waters. Water quality protection practices include but are not
6 limited to treatment requirements, standards of performance, effluent standards, and operating procedures
7 and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material
8 storage.

9 ~~(28)~~(36) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug,
10 jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition
11 of ground water.

12 (37) "Watershed advisory group" means a group of individuals who wish to participate in an
13 advisory capacity in revising and reprioritizing the list of water bodies developed under [section 3] and in
14 the development of TMDLs under [section 4], including those groups or individuals requested by the
15 department to participate in an advisory capacity as provided in [section 5]."

16
17 **NEW SECTION. Section 2. Purpose.** Consistent with the policy established in 75-5-101(2) to
18 provide a comprehensive program for the prevention, abatement, and control of water pollution, the
19 purpose of [sections 2 through 6] is to further direct the department to monitor state waters to accurately
20 assess their quality and, when required, to develop total maximum daily loads for those water bodies
21 identified as threatened or impaired.

22
23 **NEW SECTION. Section 3. Monitoring -- water quality assessment listing.** (1) The department
24 shall monitor state waters to assess the quality of those waters and to identify surface water bodies or
25 segments of surface water bodies that are threatened or impaired. The department shall use the monitoring
26 results to revise the list of water bodies that are identified as threatened or impaired and to establish a
27 priority ranking for TMDL development for those waters in accordance with subsections (4) and (7).

28 (2) In revising the list prepared pursuant to this section, the department shall use all currently
29 available data, including information or data obtained from federal, state, and local agencies, private
30 entities, or individuals with an interest in water quality protection. Except as provided in subsection (6),

1 the department may modify the list only if there is sufficient credible data to support the modification. Prior
2 to publishing a final list, the department shall provide public notice and allow 60 days for public comment
3 on the draft list. The department shall make available for public review, upon request, documentation used
4 in the determination to list a particular water body, including, at a minimum, a description of the
5 information, data, and methodology used. The department may charge a reasonable fee for the
6 documentation, commensurate with the cost of providing the documentation to the requestor.

7 (3) A person may request that the department add or remove a water body or reprioritize a water
8 body on a draft or published list by providing the data or information necessary to support the request. The
9 department shall review the data within 60 days from its submittal. If the department determines that there
10 is sufficient credible data to grant the request, the department shall provide public notice of its intended
11 action and allow 60 days for public comment prior to taking action on the request. A person aggrieved by
12 the department's decision to grant or deny the request may appeal the department's decision to the board.

13 (4) The department shall, in consultation with local conservation districts and watershed advisory
14 groups pursuant to [section 5], review and revise the list and priority rankings of water bodies identified
15 as threatened or impaired. The department shall review and revise the list at intervals not to exceed 5
16 years. The department shall make available for public review the data and information used in making any
17 changes in its list of threatened or impaired water bodies that is developed and maintained pursuant to this
18 section.

19 (5) By October 1, 1999, the department shall develop and maintain a data management system
20 that can be used to assess the validity and reliability of the data used in the listing and priority ranking
21 process. The department shall make available to the public, upon request, data from its data management
22 system. The department may charge a reasonable fee for the data, commensurate with its cost of
23 providing the data to the requestor.

24 (6) By October 1, 1999, the department shall use the data management system developed and
25 maintained pursuant to subsection (5) to revise the list and to remove any water body that lacks sufficient
26 credible data to support its listing. If the department removes a water body because there is a lack of
27 sufficient credible data to support its listing, the department shall monitor and assess that water body
28 during the next field season or as soon as possible thereafter to determine whether it is a threatened water
29 body or an impaired water body.

30 (7) In prioritizing water bodies for TMDL development, the department shall, in consultation with

1 the statewide TMDL advisory group established pursuant to subsection (9), take into consideration the
2 following:

3 (a) the beneficial uses established for a water body;

4 (b) the extent that natural factors over which humans have no control are contributing to any
5 impairment;

6 (c) the impacts to human health and aquatic life;

7 (d) the degree of public interest and support;

8 (e) the character of the pollutant and the severity and magnitude of water quality standard
9 noncompliance;

10 (f) whether the water body is an important high-quality resource in an early stage of degradation;

11 (g) the size of the water body not achieving standards;

12 (h) immediate programmatic needs such as waste load allocations for new permits or permit
13 renewals and load allocations for new nonpoint sources;

14 (i) court orders and decisions relating to water quality;

15 (j) state policies and priorities, including the protection and restoration of native fish when
16 appropriate;

17 (k) the availability of technology and resources to correct the problems;

18 (l) whether actions or voluntary programs that are likely to correct the impairment of a particular
19 water body are currently in place; and

20 (m) the recreational, economic, and aesthetic importance of a particular water body.

21 (8) The department shall, in consultation with the statewide TMDL advisory group, develop a
22 method of rating water bodies according to the criteria and considerations described in subsection (7) in
23 order to rank the listed water bodies as high priority, moderate priority, or low priority for TMDL
24 development. The department may not rank a water body as a high priority under this section without first
25 validating the data necessary to support the ranking.

26 (9) The department shall establish a statewide TMDL advisory group to serve in the consultation
27 capacity set forth in [section 5(2)(a)] and subsections (7) and (8) of this section. ~~Twelve~~ FIFTEEN members
28 must be appointed by the director, based upon one nomination from each of the following:

29 (a) livestock-oriented agriculture;

30 (b) farming-oriented agriculture;

- 1 (c) conservation or environmental interests;
- 2 (d) water-based recreationists;
- 3 (e) the forestry industry;
- 4 (f) municipalities;
- 5 (g) point source dischargers;
- 6 (h) mining;
- 7 (i) federal land management agencies;
- 8 (j) state trust land management agencies;
- 9 (k) supervisors of soil and water conservation districts for counties east of the continental divide;

10 and

- 11 (l) supervisors of soil and water conservation districts for counties west of the continental divide;
- 12 (M) THE TOURISM INDUSTRY;
- 13 (N) THE HYDROELECTRIC INDUSTRY; AND
- 14 (O) FISHING-RELATED BUSINESSES.

15 (10) The department shall provide public notice of meetings of the statewide TMDL advisory group
 16 and shall solicit, document, and consider public comments provided during the deliberations of the advisory
 17 group.

18

19 NEW SECTION. Section 4. Development and implementation of total maximum daily loads. (1)
 20 The department shall, in consultation with local conservation districts and watershed advisory groups,
 21 develop total maximum daily loads or TMDLs for threatened or impaired water bodies or segments of water
 22 bodies in order of the priority ranking established by the department under [section 3]. Each TMDL must
 23 be established at a level that will achieve compliance with applicable water quality standards and must
 24 include a reasonable margin of safety that takes into account any lack of knowledge concerning the
 25 relationship between the TMDL and water quality standards. The department shall consider APPLICABLE
 26 GUIDANCE FROM THE FEDERAL ENVIRONMENTAL PROTECTION AGENCY, AS WELL AS the
 27 environmental, economic, and social costs and benefits of developing and implementing a TMDL.

28 (2) In establishing TMDLs under subsection (1), the department ~~shall consider applicable federal~~
 29 ~~guidelines for establishing waste load allocations for point sources and load allocations for nonpoint~~
 30 ~~sources, as well as for allowing~~ MAY ESTABLISH WASTE LOAD ALLOCATIONS FOR POINT SOURCES.

1 AND LOAD ALLOCATIONS FOR NONPOINT SOURCES AS SET FORTH IN SUBSECTION (8), AND MAY
2 ALLOW FOR effluent trading. The department shall, in consultation with local conservation districts and
3 watershed advisory groups, develop reasonable land, soil, and water conservation practices specifically
4 recognizing established practices and programs for nonpoint sources.

5 (3) Within 10 years from [the effective date of this act], the department shall develop TMDLs for
6 all water bodies on the list of waters that are threatened or impaired, as that list reads on [the effective date
7 of this act]. This provision does not apply to water bodies that are subsequently added or removed from
8 the list according to the provisions of [section 3]. Within 1 year from [the effective date of this act], the
9 department shall establish a schedule for completing the TMDLs within the 10-year period established by
10 this subsection.

11 (4) The department shall provide guidance for TMDL development on any threatened or impaired
12 water body, regardless of its priority ranking, if the necessary funding and resources from sources outside
13 the department are available to develop the TMDL and to monitor the effectiveness of implementation
14 efforts. The department shall review the TMDL and either approve or disapprove the TMDL. If the TMDL
15 is approved by the department, the department shall ensure implementation of the TMDL according to the
16 provisions of subsections (6) through (8).

17 (5) For water bodies listed under [section 3], the department shall provide assistance and support
18 to landowners, local conservation districts, and watershed advisory groups for interim measures that may
19 restore water quality and remove the need to establish a TMDL, such as informational programs regarding
20 control of nonpoint source pollution and voluntary measures designed to correct impairments.

21 (6) After development of a TMDL and upon approval of the TMDL, the department shall:

22 (a) incorporate the TMDL into its current continuing planning process;

23 (b) incorporate the waste load allocation developed for point sources during the TMDL process into
24 appropriate water discharge permits; and

25 (c) assist and inform landowners regarding the application of a voluntary program of reasonable
26 land, soil, and water conservation practices developed pursuant to subsection (2).

27 (7) Once the control measures identified in subsection (6) have been implemented, the department
28 shall develop a monitoring program to assess the waters that are subject to the TMDL to determine whether
29 compliance with water quality standards has been attained for a particular water body or whether the water
30 body is no longer threatened. The monitoring program must be designed based on the specific impairments

1 or pollution sources. The department's monitoring program must include long-term monitoring efforts for
2 the analysis of the effectiveness of the control measures developed.

3 (8) The department shall support a voluntary program of reasonable land, soil, and water
4 conservation practices to achieve compliance with water quality standards for nonpoint source activities
5 for water bodies that are subject to a TMDL developed and implemented pursuant to this section.

6 (9) If the monitoring program provided under subsection (7) demonstrates that the TMDL is not
7 achieving compliance with applicable water quality standards within 5 years after approval of a TMDL, the
8 department shall conduct a formal evaluation of progress in restoring water quality and the status of
9 reasonable land, soil, and water conservation practice implementation to determine if:

10 (a) the implementation of a new or improved phase of voluntary reasonable land, soil, and water
11 conservation practice is necessary;

12 (b) water quality is improving but a specified time is needed for compliance with water quality
13 standards; or

14 (c) revisions to the TMDL are necessary to achieve applicable water quality standards.

15 (10) Pending completion of a TMDL on a water body listed pursuant to [section 3]:

16 (a) point source discharges to a listed water body may commence or continue, provided that:

17 (i) the discharge is in conformance with a discharge permit that reflects, in the manner and to the
18 extent applicable for the particular discharge, the provisions of 75-5-303;

19 (ii) the discharge will not cause a decline in water quality for parameters by which the water body
20 is impaired; and

21 (iii) minimum treatment requirements adopted pursuant to 75-5-305 are met;

22 (b) the issuance of a discharge permit may not be precluded because a TMDL is pending;

23 (c) new or expanded nonpoint source activities affecting a listed water body may commence and
24 continue their activities provided those activities are conducted in accordance with reasonable land, soil,
25 and water conservation practices;

26 (d) for existing nonpoint source activities, the department shall continue to utilize educational
27 nonpoint source control programs and voluntary measures as provided in subsections (5) and (6).

28 (11) This section may not be construed to prevent a person from filing an application or petition
29 under 75-5-302, 75-5-310, or 75-5-312.

30

1 **NEW SECTION. Section 5. Watershed advisory groups.** (1) In implementing the consultation
2 requirements under [sections 3(4) and 4(1) and (2)], the department shall request the participation of
3 representatives of the following interest groups to work in an advisory capacity with the local conservation
4 districts and the department:

- 5 (a) livestock-oriented agriculture;
- 6 (b) farming-oriented agriculture;
- 7 (c) conservation or environmental interests;
- 8 (d) water-based recreationists;
- 9 (e) the forestry industry;
- 10 (f) municipalities;
- 11 (g) affected or potentially affected point source dischargers;
- 12 (h) mining;
- 13 (i) existing local watershed groups;
- 14 (j) federal land management agencies; ~~and~~
- 15 (k) state trust land management agencies;
- 16 **(L) THE TOURISM INDUSTRY;**
- 17 **(M) THE HYDROELECTRIC INDUSTRY, IF APPLICABLE; AND**
- 18 **(N) FISHING-RELATED BUSINESSES.**

19 (2) In implementing the consultation requirements of [sections 3 and 4], the department shall:

20 (a) prior to consultation with the statewide TMDL advisory group pursuant to [section 2(7) and (8)],
21 schedule meetings with appropriate local conservation districts and the watershed advisory groups at a
22 location within their affected geographic area to review and revise the list of water bodies provided for in
23 [section 3]; and

24 (b) at a meeting held pursuant to subsection (2)(a), request whether there is new information that
25 may affect the listing or priority ranking on water bodies within the affected area and solicit comments on
26 revising the list.

27 (3) Based upon the information provided pursuant to subsection (2)(b), the department shall revise
28 the list according to [section 3].

29 (4) Prior to and during the development of a TMDL within a particular watershed or basin, the
30 department shall schedule a meeting or meetings with appropriate local conservation districts and

1 watershed advisory groups at a location within the affected geographic area in order to solicit comments
2 on developing the TMDL and information on sources that may be contributing to water quality impairment.

3

4 NEW SECTION. **Section 6. Nonimpairment of water rights.** ~~{Sections 2 through 5} do not~~
5 NOTHING IN [THIS ACT] MAY BE CONSTRUED TO divest, impair, or diminish any water right recognized
6 pursuant to Title 85.

7

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

11

12 NEW SECTION. **Section 8. Effective date.** [This act] is effective on passage and approval.

13

-END-

1 HOUSE BILL NO. 546

2 INTRODUCED BY TASH, GROSFIELD, KNOX, GRINDE, HARP, MERCER

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE WATER QUALITY LAWS TO FURTHER DIRECT
5 THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO MONITOR STATE WATERS TO ASSESS THEIR
6 QUALITY AND TO DEVELOP TOTAL MAXIMUM DAILY LOADS FOR THOSE WATERS IDENTIFIED AS
7 THREATENED OR IMPAIRED; AMENDING SECTION 75-5-103, MCA; AND PROVIDING AN IMMEDIATE
8 EFFECTIVE DATE."

9
10 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.

1 HOUSE BILL NO. 546

2 INTRODUCED BY TASH, GROSFIELD, KNOX, GRINDE, HARP, MERCER

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE WATER QUALITY LAWS TO FURTHER DIRECT
5 THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO MONITOR STATE WATERS TO ASSESS THEIR
6 QUALITY AND TO DEVELOP TOTAL MAXIMUM DAILY LOADS FOR THOSE WATERS IDENTIFIED AS
7 THREATENED OR IMPAIRED; AMENDING SECTION 75-5-103, MCA; AND PROVIDING AN IMMEDIATE
8 EFFECTIVE DATE."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:11
12 **Section 1.** Section 75-5-103, MCA, is amended to read:13 "75-5-103. **Definitions.** Unless the context requires otherwise, in this chapter, the following
14 definitions apply:

15 (1) "Board" means the board of environmental review provided for in 2-15-3502.

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

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

19 ~~(4)~~ (a) "Currently available data" means data that is readily available to the department at the time
20 a decision is made, including information supporting its previous lists of water bodies that are threatened
21 or impaired.22 ~~(b)~~ The term does not mean new data to be obtained as a result of department efforts.23 ~~(4)~~(5) "Degradation" means a change in water quality that lowers the quality of high-quality waters
24 for a parameter. The term does not include those changes in water quality determined to be nonsignificant
25 pursuant to 75-5-301(5)(c).26 ~~(5)~~(6) "Department" means the department of environmental quality provided for in 2-15-3501.27 ~~(6)~~(7) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and
28 includes sewage systems and treatment works.29 ~~(7)~~(8) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations
30 of chemical, physical, biological, and other constituents that are discharged into state waters.

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

3 ~~(9)~~(10) "High-quality waters" means all state waters, except:

4 (a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established
5 by the board's classification rules; and

6 (b) surface waters that:

7 (i) are not capable of supporting any one of the designated uses for their classification; or

8 (ii) have zero flow or surface expression for more than 270 days during most years.

9 (11) "Impaired water body" means a water body OR STREAM SEGMENT for which sufficient
10 credible data shows that the water body OR STREAM SEGMENT is failing to achieve compliance with
11 applicable water quality standards.

12 ~~(10)~~(12) "Industrial waste" means a waste substance from the process of business or industry or
13 from the development of any natural resource, together with any sewage that may be present.

14 ~~(11)~~(13) "Interested person" means a person who has a real property interest, a water right, or an
15 economic interest that is or may be directly and adversely affected by the department's preliminary decision
16 regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has
17 requested authorization to degrade high-quality waters.

18 (14) "Load allocation" means the portion of a receiving water's loading capacity that is allocated
19 to one of its existing or future nonpoint sources or to natural background sources.

20 (15) "Loading capacity" means the mass of a pollutant that a water body can assimilate without
21 a violation of water quality standards. For pollutants that cannot be measured in terms of mass, it means
22 the maximum change that can occur from the best practicable condition in a surface water without causing
23 a violation of the surface water quality standards.

24 ~~(12)~~(16) "Local department of health" means the staff, including health officers, employed by a
25 county, city, city-county, or district board of health.

26 ~~(13)~~(17) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium,
27 barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver,
28 thallium, and zinc.

29 ~~(14)~~(18) "Mixing zone" means an area established in a permit or final decision on nondegradation
30 issued by the department where water quality standards may be exceeded, subject to conditions that are

1 imposed by the department and that are consistent with the rules adopted by the board.

2 ~~(15)~~(19) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark,
3 lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or
4 discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state
5 waters.

6 ~~(16)~~(20) "Outstanding resource waters" means:

7 (a) state surface waters located wholly within the boundaries of areas designated as national parks
8 or national wilderness areas as of October 1, 1995; or

9 (b) other surface waters or ground waters classified by the board under the provisions of 75-5-316
10 and approved by the legislature.

11 ~~(17)~~(21) "Owner or operator" means a person who owns, leases, operates, controls, or supervises
12 a point source.

13 ~~(18)~~(22) "Parameter" means a physical, biological, or chemical property of state water when a value
14 of that property affects the quality of the state water.

15 ~~(19)~~(23) "Person" means the state, a political subdivision of the state, institution, firm, corporation,
16 partnership, individual, or other entity and includes persons resident in Canada.

17 ~~(20)~~(24) "Point source" means a discernible, confined, and discrete conveyance, including but not
18 limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel
19 or other floating craft, from which pollutants are or may be discharged.

20 ~~(21)~~(25) (a) "Pollution" means:

21 (i) contamination or other alteration of the physical, chemical, or biological properties of state
22 waters that exceeds that permitted by Montana water quality standards, including but not limited to
23 standards relating to change in temperature, taste, color, turbidity, or odor; or

24 (ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or
25 other substance into state water that will or is likely to create a nuisance or render the waters harmful,
26 detrimental, or injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals,
27 birds, fish, or other wildlife.

28 (b) A discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution
29 discharge permit rules of the board is not pollution under this chapter. Activities conducted under the
30 conditions imposed by the department in short-term authorizations pursuant to 75-5-308 are not considered

1 pollution under this chapter.

2 ~~(22)~~(26) "Sewage" means water-carried waste products from residences, public buildings,
3 institutions, or other buildings, including discharge from human beings or animals, together with ground
4 water infiltration and surface water present.

5 ~~(23)~~(27) "Sewage system" means a device for collecting or conducting sewage, industrial wastes,
6 or other wastes to an ultimate disposal point.

7 ~~(24)~~(28) "Standard of performance" means a standard adopted by the board for the control of the
8 discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application
9 of the best available demonstrated control technology, processes, operating methods, or other alternatives,
10 including, when practicable, a standard permitting no discharge of pollutants.

11 ~~(25)~~(29) (a) "State waters" means a body of water, irrigation system, or drainage system, either
12 surface or underground.

13 (b) The term does not apply to:

14 (i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

15 (ii) irrigation waters or land application disposal waters when the waters are used up within the
16 irrigation or land application disposal system and the waters are not returned to state waters.

17 (30) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in
18 combination with narrative information, that supports a finding that the water body is not achieving
19 compliance with applicable water quality standards.

20 (31) "Threatened water body" means a water body OR STREAM SEGMENT for which sufficient
21 credible data and calculated increases in loads show that the water body OR STREAM SEGMENT is fully
22 supporting its designated uses but threatened for a particular designated use because of:

23 (a) proposed sources that are not subject to pollution prevention or control actions required by a
24 discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices;
25 or

26 (b) documented adverse pollution trends.

27 (32) "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations
28 for point sources and load allocations for both nonpoint sources and natural background sources established
29 at a level necessary to achieve compliance with applicable surface water quality standards.

30 ~~(26)~~(33) "Treatment works" means works, including sewage lagoons, installed for treating or

1 holding sewage, industrial wastes, or other wastes.

2 (34) "Waste load allocation" means the portion of a receiving water's loading capacity that is
3 allocated to one of its existing or future point sources.

4 ~~(27)~~(35) "Water quality protection practices" means those activities, prohibitions, maintenance
5 procedures, or other management practices applied to point and nonpoint sources designed to protect,
6 maintain, and improve the quality of state waters. Water quality protection practices include but are not
7 limited to treatment requirements, standards of performance, effluent standards, and operating procedures
8 and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material
9 storage.

10 ~~(28)~~(36) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug,
11 jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition
12 of ground water.

13 (37) "Watershed advisory group" means a group of individuals who wish to participate in an
14 advisory capacity in revising and reprioritizing the list of water bodies developed under [section 3] and in
15 the development of TMDLs under [section 4], including those groups or individuals requested by the
16 department to participate in an advisory capacity as provided in [section 5]."

17
18 **NEW SECTION. Section 2. Purpose.** Consistent with the policy established in 75-5-101(2) to
19 provide a comprehensive program for the prevention, abatement, and control of water pollution, the
20 purpose of [sections 2 through 6] is to further direct the department to monitor state waters to accurately
21 assess their quality and, when required, to develop total maximum daily loads for those water bodies
22 identified as threatened or impaired.

23
24 **NEW SECTION. Section 3. Monitoring -- water quality assessment listing.** (1) The department
25 shall monitor state waters to assess the quality of those waters and to identify surface water bodies or
26 segments of surface water bodies that are threatened or impaired. The department shall use the monitoring
27 results to revise the list of water bodies that are identified as threatened or impaired and to establish a
28 priority ranking for TMDL development for those waters in accordance with subsections (4) and (7).

29 (2) In revising the list prepared pursuant to this section, the department shall use all currently
30 available data, including information or data obtained from federal, state, and local agencies, private

1 entities, or individuals with an interest in water quality protection. Except as provided in subsection (6),
2 the department may modify the list only if there is sufficient credible data to support the modification. Prior
3 to publishing a final list, the department shall provide public notice and allow 60 days for public comment
4 on the draft list. The department shall make available for public review, upon request, documentation used
5 in the determination to list a particular water body, including, at a minimum, a description of the
6 information, data, and methodology used. The department may charge a reasonable fee for the
7 documentation, commensurate with the cost of providing the documentation to the requestor.

8 (3) A person may request that the department add or remove a water body or reprioritize a water
9 body on a draft or published list by providing the data or information necessary to support the request. The
10 department shall review the data within 60 days from its submittal. If the department determines that there
11 is sufficient credible data to grant the request, the department shall provide public notice of its intended
12 action and allow 60 days for public comment prior to taking action on the request. A person aggrieved by
13 the department's decision to grant or deny the request may appeal the department's decision to the board.

14 (4) The department shall, in consultation with local conservation districts and watershed advisory
15 groups pursuant to [section 5], review and revise the list and priority rankings of water bodies identified
16 as threatened or impaired. The department shall review and revise the list at intervals not to exceed 5
17 years. The department shall make available for public review the data and information used in making any
18 changes in its list of threatened or impaired water bodies that is developed and maintained pursuant to this
19 section.

20 (5) By October 1, 1999, the department shall develop and maintain a data management system
21 that can be used to assess the validity and reliability of the data used in the listing and priority ranking
22 process. The department shall make available to the public, upon request, data from its data management
23 system. The department may charge a reasonable fee for the data, commensurate with its cost of
24 providing the data to the requestor.

25 (6) By October 1, 1999, the department shall use the data management system developed and
26 maintained pursuant to subsection (5) to revise the list and to remove any water body that lacks sufficient
27 credible data to support its listing. If the department removes a water body because there is a lack of
28 sufficient credible data to support its listing, the department shall monitor and assess that water body
29 during the next field season or as soon as possible thereafter to determine whether it is a threatened water
30 body or an impaired water body.

1 (7) In prioritizing water bodies for TMDL development, the department shall, in consultation with
2 the statewide TMDL advisory group established pursuant to subsection (9), take into consideration the
3 following:

4 (a) the beneficial uses established for a water body;

5 (b) the extent that natural factors over which humans have no control are contributing to any
6 impairment;

7 (c) the impacts to human health and aquatic life;

8 (d) the degree of public interest and support;

9 (e) the character of the pollutant and the severity and magnitude of water quality standard
10 noncompliance;

11 (f) whether the water body is an important high-quality resource in an early stage of degradation;

12 (g) the size of the water body not achieving standards;

13 (h) immediate programmatic needs such as waste load allocations for new permits or permit
14 renewals and load allocations for new nonpoint sources;

15 (i) court orders and decisions relating to water quality;

16 (j) state policies and priorities, including the protection and restoration of native fish when
17 appropriate;

18 (k) the availability of technology and resources to correct the problems;

19 (l) whether actions or voluntary programs that are likely to correct the impairment of a particular
20 water body are currently in place; and

21 (m) the recreational, economic, and aesthetic importance of a particular water body.

22 (8) The department shall, in consultation with the statewide TMDL advisory group, develop a
23 method of rating water bodies according to the criteria and considerations described in subsection (7) in
24 order to rank the listed water bodies as high priority, moderate priority, or low priority for TMDL
25 development. The department may not rank a water body as a high priority under this section without first
26 validating the data necessary to support the ranking.

27 (9) (A) The department shall establish a statewide TMDL advisory group to serve in the
28 consultation capacity set forth in [section 5(2)(a)] and subsections (7) and (8) of this section. ~~Twelve~~
29 FIFTEEN members must be appointed by the director, based upon one nomination from each of the
30 following INTERESTS:

- 1 ~~(a)~~(I) livestock-oriented agriculture;
- 2 ~~(b)~~(II) farming-oriented agriculture;
- 3 ~~(c)~~(III) conservation or environmental interests;
- 4 ~~(d)~~(IV) water-based recreationists;
- 5 ~~(e)~~(V) the forestry industry;
- 6 ~~(f)~~(VI) municipalities;
- 7 ~~(g)~~(VII) point source dischargers;
- 8 ~~(h)~~(VIII) mining;
- 9 ~~(i)~~(IX) federal land management agencies;
- 10 ~~(j)~~(X) state trust land management agencies;
- 11 ~~(k)~~(XI) supervisors of soil and water conservation districts for counties east of the continental
- 12 divide; ~~and~~
- 13 ~~(l)~~(XII) supervisors of soil and water conservation districts for counties west of the continental
- 14 divide;
- 15 ~~(M)~~(XIII) THE TOURISM INDUSTRY;
- 16 ~~(N)~~(XIV) THE HYDROELECTRIC INDUSTRY; AND
- 17 ~~(O)~~(XV) FISHING-RELATED BUSINESSES.

18 (B) IF THE DIRECTOR RECEIVES MORE THAN ONE NOMINATION FROM A PARTICULAR

19 INTEREST, THE DIRECTOR SHALL NOTIFY THE RESPECTIVE NOMINATORS AND REQUEST THAT THEY

20 AGREE ON ONE NOMINEE.

21 (10) The department shall provide public notice of meetings of the statewide TMDL advisory group

22 and shall solicit, document, and consider public comments provided during the deliberations of the advisory

23 group.

24

25 NEW SECTION. Section 4. Development and implementation of total maximum daily loads. (1)

26 The department shall, in consultation with local conservation districts and watershed advisory groups,

27 develop total maximum daily loads or TMDLs for threatened or impaired water bodies or segments of water

28 bodies in order of the priority ranking established by the department under [section 3]. Each TMDL must

29 be established at a level that will achieve compliance with applicable water quality standards and must

30 include a reasonable margin of safety that takes into account any lack of knowledge concerning the

1 relationship between the TMDL and water quality standards. The department shall consider APPLICABLE
2 GUIDANCE FROM THE FEDERAL ENVIRONMENTAL PROTECTION AGENCY, AS WELL AS the
3 environmental, economic, and social costs and benefits of developing and implementing a TMDL.

4 (2) In establishing TMDLs under subsection (1), the department ~~shall consider applicable federal~~
5 ~~guidelines for establishing waste load allocations for point sources and load allocations for nonpoint~~
6 ~~sources, as well as for allowing~~ MAY ESTABLISH WASTE LOAD ALLOCATIONS FOR POINT SOURCES,
7 AND LOAD ALLOCATIONS FOR NONPOINT SOURCES AS SET FORTH IN SUBSECTION (8), AND MAY
8 ALLOW FOR effluent trading. The department shall, in consultation with local conservation districts and
9 watershed advisory groups, develop reasonable land, soil, and water conservation practices specifically
10 recognizing established practices and programs for nonpoint sources.

11 (3) Within 10 years from [the effective date of this act], the department shall develop TMDLs for
12 all water bodies on the list of waters that are threatened or impaired, as that list reads on [the effective date
13 of this act]. This provision does not apply to water bodies that are subsequently added or removed from
14 the list according to the provisions of [section 3]. Within 1 year from [the effective date of this act], the
15 department shall establish a schedule for completing the TMDLs within the 10-year period established by
16 this subsection. THE SCHEDULE MUST ALSO PROVIDE A REASONABLE TIMEFRAME FOR TMDL
17 DEVELOPMENT FOR IMPAIRED AND THREATENED WATER BODIES THAT ARE LISTED SUBSEQUENT TO
18 [THE EFFECTIVE DATE OF THIS ACT] AND ARE PRIORITIZED AS SET FORTH IN [SECTION 3].

19 (4) The department shall provide guidance for TMDL development on any threatened or impaired
20 water body, regardless of its priority ranking, if the necessary funding and resources from sources outside
21 the department are available to develop the TMDL and to monitor the effectiveness of implementation
22 efforts. The department shall review the TMDL and either approve or disapprove the TMDL. If the TMDL
23 is approved by the department, the department shall ensure implementation of the TMDL according to the
24 provisions of subsections (6) through (8).

25 (5) For water bodies listed under [section 3], the department shall provide assistance and support
26 to landowners, local conservation districts, and watershed advisory groups for interim measures that may
27 restore water quality and remove the need to establish a TMDL, such as informational programs regarding
28 control of nonpoint source pollution and voluntary measures designed to correct impairments. WHEN A
29 SOURCE IMPLEMENTS VOLUNTARY MEASURES TO REDUCE POLLUTANTS PRIOR TO DEVELOPMENT
30 OF A TMDL, THOSE MEASURES, WHETHER OR NOT REFLECTED IN SUBSEQUENTLY ISSUED WASTE

1 DISCHARGE PERMITS, MUST BE RECOGNIZED IN DEVELOPMENT OF THE TMDL IN A WAY THAT GIVES
2 CREDIT FOR THE POLLUTION REDUCTION EFFORTS.

3 (6) After development of a TMDL and upon approval of the TMDL, the department shall:

4 (a) incorporate the TMDL into its current continuing planning process;

5 (b) incorporate the waste load allocation developed for point sources during the TMDL process into
6 appropriate water discharge permits; and

7 (c) assist and inform landowners regarding the application of a voluntary program of reasonable
8 land, soil, and water conservation practices developed pursuant to subsection (2).

9 (7) Once the control measures identified in subsection (6) have been implemented, the department
10 shall develop a monitoring program to assess the waters that are subject to the TMDL to determine whether
11 compliance with water quality standards has been attained for a particular water body or whether the water
12 body is no longer threatened. The monitoring program must be designed based on the specific impairments
13 or pollution sources. The department's monitoring program must include long-term monitoring efforts for
14 the analysis of the effectiveness of the control measures developed.

15 (8) The department shall support a voluntary program of reasonable land, soil, and water
16 conservation practices to achieve compliance with water quality standards for nonpoint source activities
17 for water bodies that are subject to a TMDL developed and implemented pursuant to this section.

18 (9) If the monitoring program provided under subsection (7) demonstrates that the TMDL is not
19 achieving compliance with applicable water quality standards within 5 years after approval of a TMDL, the
20 department shall conduct a formal evaluation of progress in restoring water quality and the status of
21 reasonable land, soil, and water conservation practice implementation to determine if:

22 (a) the implementation of a new or improved phase of voluntary reasonable land, soil, and water
23 conservation practice is necessary;

24 (b) water quality is improving but a specified time is needed for compliance with water quality
25 standards; or

26 (c) revisions to the TMDL are necessary to achieve applicable water quality standards.

27 (10) Pending completion of a TMDL on a water body listed pursuant to [section 3]:

28 (a) point source discharges to a listed water body may commence or continue, provided that:

29 (i) the discharge is in conformance with a discharge permit that reflects, in the manner and to the
30 extent applicable for the particular discharge, the provisions of 75-5-303;

1 (ii) the discharge will not cause a decline in water quality for parameters by which the water body
2 is impaired; and

3 (iii) minimum treatment requirements adopted pursuant to 75-5-305 are met;

4 (b) the issuance of a discharge permit may not be precluded because a TMDL is pending;

5 (c) new or expanded nonpoint source activities affecting a listed water body may commence and
6 continue their activities provided those activities are conducted in accordance with reasonable land, soil,
7 and water conservation practices;

8 (d) for existing nonpoint source activities, the department shall continue to utilize educational
9 nonpoint source control programs and voluntary measures as provided in subsections (5) and (6).

10 (11) This section may not be construed to prevent a person from filing an application or petition
11 under 75-5-302, 75-5-310, or 75-5-312.

12

13 **NEW SECTION. Section 5. Watershed advisory groups.** (1) In implementing the consultation
14 requirements under [sections 3(4) and 4(1) and (2)], the department shall request the participation of
15 representatives of the following interest groups to work in an advisory capacity with the local conservation
16 districts and the department:

17 (a) livestock-oriented agriculture;

18 (b) farming-oriented agriculture;

19 (c) conservation or environmental interests;

20 (d) water-based recreationists;

21 (e) the forestry industry;

22 (f) municipalities;

23 (g) affected or potentially affected point source dischargers;

24 (h) mining;

25 (i) existing local watershed groups;

26 (j) federal land management agencies; ~~and~~

27 (k) state trust land management agencies;

28 **(L) THE TOURISM INDUSTRY;**

29 **(M) THE HYDROELECTRIC INDUSTRY, IF APPLICABLE; AND**

30 **(N) FISHING-RELATED BUSINESSES.**

1 (2) In implementing the consultation requirements of [sections 3 and 4], the department shall:

2 (a) prior to consultation with the statewide TMDL advisory group pursuant to [section 2(7) and (8)],
3 schedule meetings with appropriate local conservation districts and the watershed advisory groups at a
4 location within their affected geographic area to review and revise the list of water bodies provided for in
5 [section 3]; and

6 (b) at a meeting held pursuant to subsection (2)(a), request whether there is new information that
7 may affect the listing or priority ranking on water bodies within the affected area and solicit comments on
8 revising the list.

9 (3) Based upon the information provided pursuant to subsection (2)(b), the department shall revise
10 the list according to [section 3].

11 (4) Prior to and during the development of a TMDL within a particular watershed or basin, the
12 department shall schedule a meeting or meetings with appropriate local conservation districts and
13 watershed advisory groups at a location within the affected geographic area in order to solicit comments
14 on developing the TMDL and information on sources that may be contributing to water quality impairment.

15

16 NEW SECTION. **Section 6. Nonimpairment of water rights.** ~~[Sections 2 through 6] do not~~
17 NOTHING IN [THIS ACT] MAY BE CONSTRUED TO divest, impair, or diminish any water right recognized
18 pursuant to Title 85.

19

20 NEW SECTION. **Section 7. Codification instruction.** [Sections 2 through 6] are intended to be
21 codified as an integral part of Title 75, chapter 5, part ~~3~~ 7, and the provisions of Title 75, chapter 5, part
22 ~~3~~ 7, apply to [sections 2 through 6].

23

24 NEW SECTION. **Section 8. Effective date.** [This act] is effective on passage and approval.

25

-END-

HOUSE BILL NO. 546

INTRODUCED BY TASH, GROSFIELD, KNOX, GRINDE, HARP, MERCER

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE WATER QUALITY LAWS TO FURTHER DIRECT THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO MONITOR STATE WATERS TO ASSESS THEIR QUALITY AND TO DEVELOP TOTAL MAXIMUM DAILY LOADS FOR THOSE WATERS IDENTIFIED AS THREATENED OR IMPAIRED; AMENDING SECTION 75-5-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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 environmental review provided for in 2-15-3502.

(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) (a) "Currently available data" means data that is readily available to the department at the time a decision is made, including information supporting its previous lists of water bodies that are threatened or impaired.

(b) The term does not mean new data to be obtained as a result of department efforts.

~~(4)~~(5) "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 pursuant to 75-5-301(5)(c).

~~(5)~~(6) "Department" means the department of environmental quality provided for in 2-15-3501.

~~(6)~~(7) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

~~(7)~~(8) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents that are discharged into state waters.

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

3 ~~(9)~~(10) "High-quality waters" means all state waters, except:

4 (a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established
5 by the board's classification rules; and

6 (b) surface waters that:

7 (i) are not capable of supporting any one of the designated uses for their classification; or

8 (ii) have zero flow or surface expression for more than 270 days during most years.

9 (11) "Impaired water body" means a water body OR STREAM SEGMENT for which sufficient
10 credible data shows that the water body OR STREAM SEGMENT is failing to achieve compliance with
11 applicable water quality standards.

12 ~~(10)~~(12) "Industrial waste" means a waste substance from the process of business or industry or
13 from the development of any natural resource, together with any sewage that may be present.

14 ~~(11)~~(13) "Interested person" means a person who has a real property interest, a water right, or an
15 economic interest that is or may be directly and adversely affected by the department's preliminary decision
16 regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has
17 requested authorization to degrade high-quality waters.

18 (14) "Load allocation" means the portion of a receiving water's loading capacity that is allocated
19 to one of its existing or future nonpoint sources or to natural background sources.

20 (15) "Loading capacity" means the mass of a pollutant that a water body can assimilate without
21 a violation of water quality standards. For pollutants that cannot be measured in terms of mass, it means
22 the maximum change that can occur from the best practicable condition in a surface water without causing
23 a violation of the surface water quality standards.

24 ~~(12)~~(16) "Local department of health" means the staff, including health officers, employed by a
25 county, city, city-county, or district board of health.

26 ~~(13)~~(17) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium,
27 barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver,
28 thallium, and zinc.

29 ~~(14)~~(18) "Mixing zone" means an area established in a permit or final decision on nondegradation
30 issued by the department where water quality standards may be exceeded, subject to conditions that are

1 imposed by the department and that are consistent with the rules adopted by the board.

2 ~~(15)~~(19) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark,
3 lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or
4 discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state
5 waters.

6 ~~(16)~~(20) "Outstanding resource waters" means:

7 (a) state surface waters located wholly within the boundaries of areas designated as national parks
8 or national wilderness areas as of October 1, 1995; or

9 (b) other surface waters or ground waters classified by the board under the provisions of 75-5-316
10 and approved by the legislature.

11 ~~(17)~~(21) "Owner or operator" means a person who owns, leases, operates, controls, or supervises
12 a point source.

13 ~~(18)~~(22) "Parameter" means a physical, biological, or chemical property of state water when a value
14 of that property affects the quality of the state water.

15 ~~(19)~~(23) "Person" means the state, a political subdivision of the state, institution, firm, corporation,
16 partnership, individual, or other entity and includes persons resident in Canada.

17 ~~(20)~~(24) "Point source" means a discernible, confined, and discrete conveyance, including but not
18 limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel
19 or other floating craft, from which pollutants are or may be discharged.

20 ~~(21)~~(25) (a) "Pollution" means:

21 (i) contamination or other alteration of the physical, chemical, or biological properties of state
22 waters that exceeds that permitted by Montana water quality standards, including but not limited to
23 standards relating to change in temperature, taste, color, turbidity, or odor; or

24 (ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or
25 other substance into state water that will or is likely to create a nuisance or render the waters harmful,
26 detrimental, or injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals,
27 birds, fish, or other wildlife.

28 (b) A discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution
29 discharge permit rules of the board is not pollution under this chapter. Activities conducted under the
30 conditions imposed by the department in short-term authorizations pursuant to 75-5-308 are not considered

1 pollution under this chapter.

2 ~~(22)~~(26) "Sewage" means water-carried waste products from residences, public buildings,
3 institutions, or other buildings, including discharge from human beings or animals, together with ground
4 water infiltration and surface water present.

5 ~~(23)~~(27) "Sewage system" means a device for collecting or conducting sewage, industrial wastes,
6 or other wastes to an ultimate disposal point.

7 ~~(24)~~(28) "Standard of performance" means a standard adopted by the board for the control of the
8 discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application
9 of the best available demonstrated control technology, processes, operating methods, or other alternatives,
10 including, when practicable, a standard permitting no discharge of pollutants.

11 ~~(25)~~(29) (a) "State waters" means a body of water, irrigation system, or drainage system, either
12 surface or underground.

13 (b) The term does not apply to:

14 (i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

15 (ii) irrigation waters or land application disposal waters when the waters are used up within the
16 irrigation or land application disposal system and the waters are not returned to state waters.

17 (30) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in
18 combination with narrative information, that supports a finding that the AS TO WHETHER A water body
19 is not achieving compliance with applicable water quality standards.

20 (31) "Threatened water body" means a water body OR STREAM SEGMENT for which sufficient
21 credible data and calculated increases in loads show that the water body OR STREAM SEGMENT is fully
22 supporting its designated uses but threatened for a particular designated use because of:

23 (a) proposed sources that are not subject to pollution prevention or control actions required by a
24 discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices;
25 or

26 (b) documented adverse pollution trends.

27 (32) "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations
28 for point sources and load allocations for both nonpoint sources and natural background sources established
29 at a level necessary to achieve compliance with applicable surface water quality standards.

30 ~~(26)~~(33) "Treatment works" means works, including sewage lagoons, installed for treating or

1 holding sewage, industrial wastes, or other wastes.

2 (34) "Waste load allocation" means the portion of a receiving water's loading capacity that is
3 allocated to one of its existing or future point sources.

4 ~~(27)~~(35) "Water quality protection practices" means those activities, prohibitions, maintenance
5 procedures, or other management practices applied to point and nonpoint sources designed to protect,
6 maintain, and improve the quality of state waters. Water quality protection practices include but are not
7 limited to treatment requirements, standards of performance, effluent standards, and operating procedures
8 and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material
9 storage.

10 ~~(28)~~(36) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug,
11 jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition
12 of ground water.

13 (37) "Watershed advisory group" means a group of individuals who wish to participate in an
14 advisory capacity in revising and reprioritizing the list of water bodies developed under [section 3] and in
15 the development of TMDLs under [section 4], including those groups or individuals requested by the
16 department to participate in an advisory capacity as provided in [section 5]."

17

18 **NEW SECTION. Section 2. Purpose.** Consistent with the policy established in 75-5-101(2) to
19 provide a comprehensive program for the prevention, abatement, and control of water pollution, the
20 purpose of [sections 2 through 6] is to further direct the department to monitor state waters to accurately
21 assess their quality and, when required, to develop total maximum daily loads for those water bodies
22 identified as threatened or impaired.

23

24 **NEW SECTION. Section 3. Monitoring -- water quality assessment listing.** (1) The department
25 shall monitor state waters to assess the quality of those waters and to identify surface water bodies or
26 segments of surface water bodies that are threatened or impaired. The department shall use the monitoring
27 results to revise the list of water bodies that are identified as threatened or impaired and to establish a
28 priority ranking for TMDL development for those waters in accordance with subsections (4) and (7).

29 (2) In revising the list prepared pursuant to this section, the department shall use all currently
30 available data, including information or data obtained from federal, state, and local agencies, private

1 entities, or individuals with an interest in water quality protection. Except as provided in subsection (6),
2 the department may modify the list only if there is sufficient credible data to support the modification. Prior
3 to publishing a final list, the department shall provide public notice and allow 60 days for public comment
4 on the draft list. The department shall make available for public review, upon request, documentation used
5 in the determination to list OR DELIST a particular water body, including, at a minimum, a description of
6 the information, data, and methodology used. The department may charge a reasonable fee for the
7 documentation, commensurate with the cost of providing the documentation to the requestor.

8 (3) A person may request that the department add or remove a water body or reprioritize a water
9 body on a draft or published list by providing the data or information necessary to support the request. The
10 department shall review the data within 60 days from its submittal. If the department determines that there
11 is sufficient credible data to grant the request, the department shall provide public notice of its intended
12 action and allow 60 days for public comment prior to taking action on the request. A person aggrieved by
13 the department's decision to grant or deny the request may appeal the department's decision to the board.

14 (4) The department shall, in consultation with local conservation districts and watershed advisory
15 groups pursuant to [section 5], review and revise the list and priority rankings of water bodies identified
16 as threatened or impaired. The department shall review and revise the list at intervals not to exceed 5
17 years. The department shall make available for public review the data and information used in making any
18 changes in its list of threatened or impaired water bodies that is developed and maintained pursuant to this
19 section.

20 (5) By October 1, 1999, the department shall develop and maintain a data management system
21 that can be used to assess the validity and reliability of the data used in the listing and priority ranking
22 process. The department shall make available to the public, upon request, data from its data management
23 system. The department may charge a reasonable fee for the data, commensurate with its cost of
24 providing the data to the requestor.

25 (6) By October 1, 1999, the department shall use the data management system developed and
26 maintained pursuant to subsection (5) to revise the list and to remove any water body that lacks sufficient
27 credible data to support its listing. If the department removes a water body because there is a lack of
28 sufficient credible data to support its listing, the department shall monitor and assess that water body
29 during the next field season or as soon as possible thereafter to determine whether it is a threatened water
30 body or an impaired water body.

1 (7) In prioritizing water bodies for TMDL development, the department shall, in consultation with
2 the statewide TMDL advisory group established pursuant to subsection (9), take into consideration the
3 following:

4 (a) the beneficial uses established for a water body;

5 (b) the extent that natural factors over which humans have no control are contributing to any
6 impairment;

7 (c) the impacts to human health and aquatic life;

8 (d) the degree of public interest and support;

9 (e) the character of the pollutant and the severity and magnitude of water quality standard
10 noncompliance;

11 (f) whether the water body is an important high-quality resource in an early stage of degradation;

12 (g) the size of the water body not achieving standards;

13 (h) immediate programmatic needs such as waste load allocations for new permits or permit
14 renewals and load allocations for new nonpoint sources;

15 (i) court orders and decisions relating to water quality;

16 (j) state policies and priorities, including the protection and restoration of native fish when
17 appropriate;

18 (k) the availability of technology and resources to correct the problems;

19 (l) whether actions or voluntary programs that are likely to correct the impairment of a particular
20 water body are currently in place; and

21 (m) the recreational, economic, and aesthetic importance of a particular water body.

22 (8) The department shall, in consultation with the statewide TMDL advisory group, develop a
23 method of rating water bodies according to the criteria and considerations described in subsection (7) in
24 order to rank the listed water bodies as high priority, moderate priority, or low priority for TMDL
25 development. The department may not rank a water body as a high priority under this section without first
26 validating the data necessary to support the ranking.

27 (9) (A) The department shall establish a statewide TMDL advisory group to serve in the
28 consultation capacity set forth in [section 5(2)(a)] and subsections (7) and (8) of this section. ~~Twelve~~
29 FIFTEEN FOURTEEN members must be appointed by the director, based upon one nomination from each
30 of the following INTERESTS:

1 ~~(a)(I)~~ livestock-oriented agriculture;
 2 ~~(b)(II)~~ farming-oriented agriculture;
 3 ~~(c)(III)~~ conservation or environmental interests;
 4 ~~(d)(IV)~~ water-based recreationists;
 5 ~~(e)(V)~~ the forestry industry;
 6 ~~(f)(VI)~~ municipalities;
 7 ~~(g)(VII)~~ point source dischargers;
 8 ~~(h)(VIII)~~ mining;
 9 ~~(i)(IX)~~ federal land management agencies;
 10 ~~(j)(X)~~ state trust land management agencies;
 11 ~~(k)(XI)~~ supervisors of soil and water conservation districts for counties east of the continental
 12 divide; ~~and~~
 13 ~~(l)(XII)~~ supervisors of soil and water conservation districts for counties west of the continental
 14 divide;
 15 ~~(M)(XIII) THE TOURISM INDUSTRY;~~
 16 ~~(N)(XIV)(XIII) THE HYDROELECTRIC INDUSTRY; AND~~
 17 ~~(O)(XV)(XIV) FISHING-RELATED BUSINESSES.~~
 18 (B) IF THE DIRECTOR RECEIVES MORE THAN ONE NOMINATION FROM A PARTICULAR
 19 INTEREST, THE DIRECTOR SHALL NOTIFY THE RESPECTIVE NOMINATORS AND REQUEST THAT THEY
 20 AGREE ON ONE NOMINEE.

21 (10) The department shall provide public notice of meetings of the statewide TMDL advisory group
 22 and shall solicit, document, and consider public comments provided during the deliberations of the advisory
 23 group.
 24

25 NEW SECTION. Section 4. Development and implementation of total maximum daily loads. (1)
 26 The department shall, in consultation with local conservation districts and watershed advisory groups,
 27 develop total maximum daily loads or TMDLs for threatened or impaired water bodies or segments of water
 28 bodies in order of the priority ranking established by the department under [section 3]. Each TMDL must
 29 be established at a level that will achieve compliance with applicable water quality standards and must
 30 include a reasonable margin of safety that takes into account any lack of knowledge concerning the

1 relationship between the TMDL and water quality standards. The department shall consider APPLICABLE
2 GUIDANCE FROM THE FEDERAL ENVIRONMENTAL PROTECTION AGENCY, AS WELL AS the
3 environmental, economic, and social costs and benefits of developing and implementing a TMDL.

4 (2) In establishing TMDLs under subsection (1), the department ~~shall consider applicable federal~~
5 ~~guidelines for establishing waste load allocations for point sources and load allocations for nonpoint~~
6 ~~sources, as well as for allowing~~ MAY ESTABLISH WASTE LOAD ALLOCATIONS FOR POINT SOURCES,
7 AND LOAD ALLOCATIONS FOR NONPOINT SOURCES AS SET FORTH IN SUBSECTION (8), AND MAY
8 ALLOW FOR effluent trading. The department shall, in consultation with local conservation districts and
9 watershed advisory groups, develop reasonable land, soil, and water conservation practices specifically
10 recognizing established practices and programs for nonpoint sources.

11 (3) Within 10 years from [the effective date of this act], the department shall develop TMDLs for
12 all water bodies on the list of waters that are threatened or impaired, as that list reads on [the effective date
13 of this act]. This provision does not apply to water bodies that are subsequently added or removed from
14 the list according to the provisions of [section 3]. Within 1 year from [the effective date of this act], the
15 department shall establish a schedule for completing the TMDLs within the 10-year period established by
16 this subsection. THE SCHEDULE MUST ALSO PROVIDE A REASONABLE TIMEFRAME FOR TMDL
17 DEVELOPMENT FOR IMPAIRED AND THREATENED WATER BODIES THAT ARE LISTED SUBSEQUENT TO
18 [THE EFFECTIVE DATE OF THIS ACT] AND ARE PRIORITIZED AS SET FORTH IN [SECTION 3].

19 (4) The department shall provide guidance for TMDL development on any threatened or impaired
20 water body, regardless of its priority ranking, if the necessary funding and resources from sources outside
21 the department are available to develop the TMDL and to monitor the effectiveness of implementation
22 efforts. The department shall review the TMDL and either approve or disapprove the TMDL. If the TMDL
23 is approved by the department, the department shall ensure implementation of the TMDL according to the
24 provisions of subsections (6) through (8).

25 (5) For water bodies listed under [section 3], the department shall provide assistance and support
26 to landowners, local conservation districts, and watershed advisory groups for interim measures that may
27 restore water quality and remove the need to establish a TMDL, such as informational programs regarding
28 control of nonpoint source pollution and voluntary measures designed to correct impairments. WHEN A
29 SOURCE IMPLEMENTS VOLUNTARY MEASURES TO REDUCE POLLUTANTS PRIOR TO DEVELOPMENT
30 OF A TMDL, THOSE MEASURES, WHETHER OR NOT REFLECTED IN SUBSEQUENTLY ISSUED WASTE

1 DISCHARGE PERMITS, MUST BE RECOGNIZED IN DEVELOPMENT OF THE TMDL IN A WAY THAT GIVES
2 CREDIT FOR THE POLLUTION REDUCTION EFFORTS.

3 (6) After development of a TMDL and upon approval of the TMDL, the department shall:

4 (a) incorporate the TMDL into its current continuing planning process;

5 (b) incorporate the waste load allocation developed for point sources during the TMDL process into
6 appropriate water discharge permits; and

7 (c) assist and inform landowners regarding the application of a voluntary program of reasonable
8 land, soil, and water conservation practices developed pursuant to subsection (2).

9 (7) Once the control measures identified in subsection (6) have been implemented, the department
10 shall develop a monitoring program to assess the waters that are subject to the TMDL to determine whether
11 compliance with water quality standards has been attained for a particular water body or whether the water
12 body is no longer threatened. The monitoring program must be designed based on the specific impairments
13 or pollution sources. The department's monitoring program must include long-term monitoring efforts for
14 the analysis of the effectiveness of the control measures developed.

15 (8) The department shall support a voluntary program of reasonable land, soil, and water
16 conservation practices to achieve compliance with water quality standards for nonpoint source activities
17 for water bodies that are subject to a TMDL developed and implemented pursuant to this section.

18 (9) If the monitoring program provided under subsection (7) demonstrates that the TMDL is not
19 achieving compliance with applicable water quality standards within 5 years after approval of a TMDL, the
20 department shall conduct a formal evaluation of progress in restoring water quality and the status of
21 reasonable land, soil, and water conservation practice implementation to determine if:

22 (a) the implementation of a new or improved phase of voluntary reasonable land, soil, and water
23 conservation practice is necessary;

24 (b) water quality is improving but a specified time is needed for compliance with water quality
25 standards; or

26 (c) revisions to the TMDL are necessary to achieve applicable water quality standards.

27 (10) Pending completion of a TMDL on a water body listed pursuant to [section 3]:

28 (a) point source discharges to a listed water body may commence or continue, provided that:

29 (i) the discharge is in conformance with a discharge permit that reflects, in the manner and to the
30 extent applicable for the particular discharge, the provisions of 75-5-303;

1 (ii) the discharge will not cause a decline in water quality for parameters by which the water body
2 is impaired; and

3 (iii) minimum treatment requirements adopted pursuant to 75-5-305 are met;

4 (b) the issuance of a discharge permit may not be precluded because a TMDL is pending;

5 (c) new or expanded nonpoint source activities affecting a listed water body may commence and
6 continue their activities provided those activities are conducted in accordance with reasonable land, soil,
7 and water conservation practices;

8 (d) for existing nonpoint source activities, the department shall continue to utilize educational
9 nonpoint source control programs and voluntary measures as provided in subsections (5) and (6).

10 (11) This section may not be construed to prevent a person from filing an application or petition
11 under 75-5-302, 75-5-310, or 75-5-312.

12
13 **NEW SECTION. Section 5. Watershed advisory groups.** (1) In implementing the consultation
14 requirements under [sections 3(4) and 4(1) and (2)], the department shall request the participation of
15 representatives of the following interest groups to work in an advisory capacity with the local conservation
16 districts and the department:

17 (a) livestock-oriented agriculture;

18 (b) farming-oriented agriculture;

19 (c) conservation or environmental interests;

20 (d) water-based recreationists;

21 (e) the forestry industry;

22 (f) municipalities;

23 (g) affected or potentially affected point source dischargers;

24 (h) mining;

25 (i) existing local watershed groups;

26 (j) federal land management agencies; ~~and~~

27 (k) state trust land management agencies;

28 **(L) THE TOURISM INDUSTRY;**

29 **(M) THE HYDROELECTRIC INDUSTRY, IF APPLICABLE; AND**

30 **(N) FISHING-RELATED BUSINESSES.**

1 (2) In implementing the consultation requirements of [sections 3 and 4], the department shall:

2 (a) prior to consultation with the statewide TMDL advisory group pursuant to [section 2(7) and (8)],
3 schedule meetings with appropriate local conservation districts and the watershed advisory groups at a
4 location within their affected geographic area to review and revise the list of water bodies provided for in
5 [section 3]; and

6 (b) at a meeting held pursuant to subsection (2)(a), request whether there is new information that
7 may affect the listing or priority ranking on water bodies within the affected area and solicit comments on
8 revising the list.

9 (3) Based upon the information provided pursuant to subsection (2)(b), the department shall revise
10 the list according to [section 3].

11 (4) Prior to and during the development of a TMDL within a particular watershed or basin, the
12 department shall schedule a meeting or meetings with appropriate local conservation districts and
13 watershed advisory groups at a location within the affected geographic area in order to solicit comments
14 on developing the TMDL and information on sources that may be contributing to water quality impairment.

15

16 NEW SECTION. Section 6. Nonimpairment of water rights. ~~[Sections 2 through 6] do not~~
17 NOTHING IN [THIS ACT] MAY BE CONSTRUED TO divest, impair, or diminish any water right recognized
18 pursuant to Title 85.

19

20 NEW SECTION. Section 7. Codification instruction. [Sections 2 through 6] are intended to be
21 codified as an integral part of Title 75, chapter 5, part ~~3~~ 7, and the provisions of Title 75, chapter 5, part
22 ~~3~~ 7, apply to [sections 2 through 6].

23

24 NEW SECTION. Section 8. Effective date. [This act] is effective on passage and approval.

25

-END-