

**MINUTES**

**MONTANA HOUSE OF REPRESENTATIVES  
53rd LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON NATURAL RESOURCES**

**Call to Order:** By **DICK KNOX, CHAIRMAN**, on April 2, 1993, at 3:00 pm.

**ROLL CALL**

**Members Present:**

Rep. Dick Knox, Chairman (R)  
Rep. Rolph Tunby, Vice Chairman (R)  
Rep. Jody Bird (D)  
Rep. Russ Fagg (R)  
Rep. Gary Feland (R)  
Rep. Mike Foster (R)  
Rep. Bob Gilbert (R)  
Rep. Hal Harper (D)  
Rep. Scott Orr (R)  
Rep. Bob Raney (D)  
Rep. Dore Schwinden (D)  
Rep. Jay Stovall (R)  
Rep. Emily Swanson (D)  
Rep. Howard Toole (D)  
Rep. Doug Wagner (R)

**Members Excused:** None

**Members Absent:** Rep. Vivian Brooke

**Staff Present:** Todd Everts, Environmental Quality Council  
Michael Kakuk, Environmental Quality Council  
Roberta Opel, Committee Secretary

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

**Committee Business Summary:**

Hearing: SB 401  
Executive Action: None

**HEARING ON SB 401**

**Opening Statement by Sponsor:**

**SEN. HENRY MCCLERNAN, SD 34, Butte**, opened testimony on SB 401 on behalf of the Department of Health and Environmental Sciences (DHES). The legislation seeks to place a definition in statute to clarify Article 9 of the Montana constitution on the non-degradation water policy as it applies to agriculture and other industries. He presented a brief history on the evolution of SB 401 and the areas of disagreement prior to this bill: the definition of "high quality water", (with the use and chemistry of that water), and "mixing zones".

**Proponents' Testimony:**

Bob Robinson, Director, DHES, presented testimony in support of SB 401, noting this legislation was introduced at the department's request. EXHIBIT 1

Dan Frazier, Chief, Water Quality Bureau, DHES, spoke in support of the legislation, covering the purpose, policy and philosophy behind the legislation. EXHIBIT 2

Shelly Laine, representing Montana League of Cities and Towns, and the Helena City Commission, expressed support for the legislation from both organizations.

John Bloomquist, Montana Stockgrowers Association, expressed his organization's support for SB 401.

Jo Brunner, Executive Director, Montana Water Resources Association, testified in support of the legislation.

Gary Langley, Executive Director, Montana Mining Association, noted this was not industry sponsored legislation and clarification was needed for the state's non-degradation water policy.

Lorna Frank, Montana Farm Bureau, presented testimony in support of the bill. EXHIBIT 3

Leo Berry, attorney, representing Entech, stated this legislation was needed to address current inconsistencies in Montana law.

Rex Manuel, Cenex, stated his company's support of the bill and amendments requested by SEN. MCCLERNAN. EXHIBIT 4

Don Allen, Montana Wood Products Association, gave testimony in support of SB 401.

Peggy Trenk, Western Environmental Trade Association, stated support for the legislation and offered written testimony. EXHIBIT 5

David Owen, Montana Chamber of Commerce, voiced support for the bill.

**Opponents' Testimony:**

Dennis Olson, Northern Plains Resource Council, presented testimony in opposition to the legislation, noting the major points of disagreement have yet to be resolved. He asked the committee to amend SB 401 down to consensus language reached in the SB 401 subcommittee and leave unresolved issues to EQC to study. EXHIBITS 6, 7, and 8

Mona Jamison, attorney, Millelson Land Company, stated this is not an environmental bill, but is one of the most significant

environmental pieces of legislation in recent years. She suggested the DHES had not enforced the laws during the last 20 years, but rather public interest has focused on degradation of high quality water, spurring this issue.

**Jim Jensen, Montana Environmental Information Center,** spoke in opposition of SB 401. He raised the constitutional requirements in Article 9 Section 1, highlighting the words "maintain" and "improve", and the legislature's responsibility to fulfill the duties and enforce the current law.

**J. V. Bennett, Montana Wildlife Federation,** expressed support for prior testimony in opposition to SB 401 and stated the Federation believes this legislation will lead to increased pollution of Montana's waters.

**Questions From Committee Members and Responses:**

In response to questions from **REP. EMILY SWANSON,** Mr. Frazier explained the concept and purpose of mixing zones, as well as the legislative intent to define mixing zones.

**REP. JODY BIRD** asked Mr. Frazier to elaborate on amendment four, dealing with the five year review of authorizations to degrade state waters.

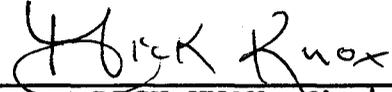
The committee questioned representatives from industry on the impact of the proposed amendments, the legislation's impact on water rights holders, agricultural users, revoking and enforcing permits, the definition of mixing zones, and the definition of degradation.

**Closing by Sponsor:**

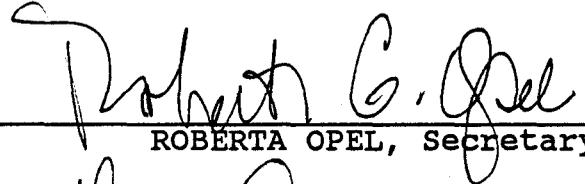
**SEN. MCCLERNAN** closed on SB 401. He stated amendment number three needed modification and suggested more amendments were possible. He added distrust of DHES hindered this legislation but asked for committee support of the bill.

ADJOURNMENT

**Adjournment:** The meeting was adjourned at 4:15 pm.



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DICK KNOX, Chairman



\_\_\_\_\_  
ROBERTA OPEL, Secretary



\_\_\_\_\_  
GAYLE CARPENTER, Transcriber

DK/ro

HOUSE OF REPRESENTATIVES

Natural Resources COMMITTEE

BILL NO.

ROLL CALL

DATE 4-2-93

NAME	PRESENT	ABSENT	EXCUSED
Jody Bird	2		
Vivian Brooke		2	
Rugg Fagg	2		
Gary Feland	2		
Mike Foster	2		
Bob Gilbert	2		
Hal Harper	2		
Scott Orr	2		
Bob Raney	2		
Dore Schwinden	2		
Jay Stovall	2		
Emily Swanson	2		
Howard Toole	2		
Doug Wagner	2		
Rolph Tunby, Vice Chairman	2		
Dick Knox, Chairman	2		

EXI - 1  
DATE 4-2-93  
NB SB 401

Testimony on SB 401  
by Bob Robinson, Director DHES  
4/2/93

Mr. Chairman and members of the committee, Senate Bill 401 is proposed by the Department of Health and Environmental Sciences to clarify conflicting provisions in the non-degradation policy as it relates to state waters and to insure that the high quality of Montana's waters are protected.

Section 75-3-303 MCA, the non-degradation policy, contains two provisions which conflict in application. (Refer to stricken language in Section 3). Subsection (1) states "that any state waters whose existing quality is higher than the established water quality standard be maintained at that high quality unless it has been affirmatively demonstrated to the board that a change is justifiable as a result of necessary economic or social development and will not preclude present and anticipated uses of these waters. Subsection (2) requires that any project or development which would constitute a new source of pollution must provide the degree of treatment necessary to maintain that existing high quality water."

So within the same section of law, we have a conflict. Section one contemplates an impact could be approved under certain stringent conditions and section two sets a standard that some interpret to mean there can be no impact.

As a result, the Board of Health, the department, cities and towns, and commercial developers are all in a quandary as to what is

allowed while the environmental community takes the position that no impact is allowable. The result is litigation over permits, as well as some uncertainty by the department as to proper enforcement and issuance of permits.

SB 401 is an attempt to resolve these conflicts. It recognizes that by living in Montana and working here we all have an impact on the water quality but requires that any impact must be minimized by requiring the best technology and practices that are economically and environmentally possible to be implemented before an authorization is issued.

This bill should not be construed as allowing any community or commercial development be given a license to pollute. Just the opposite. No significant degradation will be allowed without an authorization that complies with the stringent standards in the law. In no case can established ambient water quality standards be exceeded outside of the mixing zone.

The bill also establishes process and procedure. An authorization may be issued by DHES if and only if the stringent standards in the act are met, a record of the decision process and conditions are published and the public is involved. It also provides an appeal process to insure redress by an applicant or interested person.

This bill evolved through a series of discussions involving agency, environmental groups and industry through last fall. In the

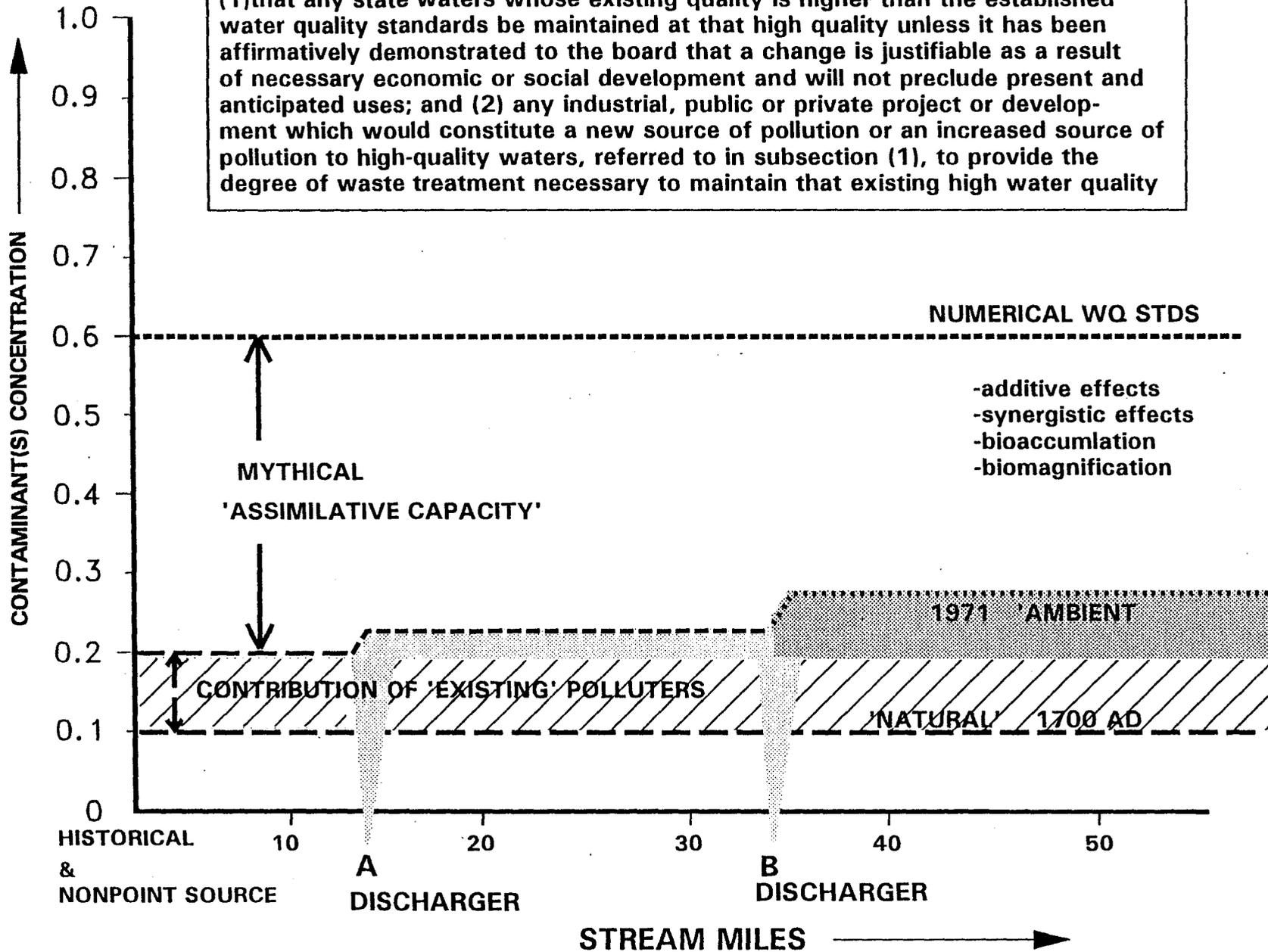
Senate, a subcommittee chairman directed the people you see here today to reexamine the bill in great detail and arrive at consensus. Over a week involving four meetings and nearly eight hours of discussions, a number of consensus amendments were developed. Most of those were adopted in the Senate. The bill was improved by those amendments. There are a few more amendments that are intended to address continuing problems.

The department is bringing this bill to you to make the non-degradation statute workable, protective and clear and I commit to you that the standards enacted will be enforced in accordance with the language of the law.

EXHIBIT 1  
DATE 4-2-93  
SB 401

# NONDEGRADATION POLICY. The board shall require:

(1) that any state waters whose existing quality is higher than the established water quality standards be maintained at that high quality unless it has been affirmatively demonstrated to the board that a change is justifiable as a result of necessary economic or social development and will not preclude present and anticipated uses; and (2) any industrial, public or private project or development which would constitute a new source of pollution or an increased source of pollution to high-quality waters, referred to in subsection (1), to provide the degree of waste treatment necessary to maintain that existing high water quality



**DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES'**

**TESTIMONY ON SB 401**

*The purpose of the Water Quality Act's nondegradation policy is to protect state waters, both ground waters and surface waters, whose quality is higher than the established standards.*

*This policy, if implemented, will protect state waters from the increased degradation or worsening of water quality which is the ultimate result of increased development, population growth and the corresponding discharge of an increasing quantity of wastes into our finite water resource.*

*The philosophy is simple and appropriate. Simply put, it is to ensure that future generations enjoy the same quality waters we now have. It means, however, that we have to rethink our accepted practices of using waters as sewers, as places to dispose of wastes and as a vehicle to transport wastes away from us, which is, unfortunately, toward someone else. Not everyone can live upstream.*

*The philosophy is simple - implementation of the policy is not. The more you study the policy and consider the many alternatives, and the innumerable possibilities, the more aware you will become of just how difficult implementation really is. The more you think about the consequences of not implementing a stringent nondegradation policy, protective of water quality, the more convinced you will become that implementation is crucial to the future of the state.*

*The department has worked for the past several months to develop SB 401. The bill is summarized fairly well by lines 3 - 13 on page 2 of the STATEMENT OF INTENT.*

*"In recognition that certain activities promote general welfare and may justify lower water quality in a particular water segment, the legislature intends that degradation be allowed in limited circumstances and under certain conditions. For example, if there is no alternative to a proposed project that does not result in degradation and the project is found to be in the best interests of the state, degradation may be allowed provided that water quality protection practices are implemented to the extent determined to be economically and technologically feasible."*

**(25) "Water quality protection practices"**

*We, in our nondegradation policy review and development over the past 1 1/2 years, decided to put in this definition in an effort to include all activities that could potentially be required as conditions of authorization to degrade state waters. The intent is to apply the "least degrading water quality protection practices economically and technologically feasible" (see 75-5-303 (3) (d)) as a condition of allowing an applicant to degrade state waters.*

**75-5-301. Classification and standards for state waters.**

*(4) & (5).*

*These sections are to give the board the authority to adopt rules governing mixing zones and implementing the nondegradation policy.*

*(4) a, b & c are intended to minimize the impacts of allowing mixing zones.*

*(5)(a) allows the board to adopt rules for department review and authorization of degradation.*

*(5)(b)(i) & (ii) allow for rules to determine; 1. important economic or social development and, 2. weighing the cost/benefit to society.*

*(5)(c) provides for rules by which the department would determine what activities would result in "nonsignificant" changes.*

**75-5-303 Nondegradation policy.** *This is the heart of the issue. We have made our best effort to determine what the 2 conflicting subsections really mean and have rewritten the policy to clarify that meaning and expand it in a manner consistent with the rest of the Water Quality Act (WQA).*

*(1) This subsection establishes the "bottom line". Existing uses must be protected and maintained; no exceptions. To not maintain all existing uses would cause violations of the water quality standards and this is expressly prohibited by the WQA.*

*(2) This subsection tells us the only way to degrade high quality waters is to get authorization from the department.*

*(3) Details when and how degradation can be allowed.*

**SUMMARY OF DHES' NONDEGRADATION BILL**

**75-5-103. Definitions.**

**(4) "Degradation"**

*The purpose of applying nondegradation review is not to totally prohibit degradation, but it does require a mandatory evaluation of alternatives that may result in less degradation or no degradation. This parameter-by-parameter approach affords the greatest protection to state waters. It essentially makes all state waters "high quality" for some or all parameters, therefore, applying the policy to all waters and 'writing off' none. The weasel wording here is in reference to changes that are determined to be "nonsignificant". All activities of man cause some degree of water pollution and it is clear that a full nondegradation review cannot be conducted on all of them, therefore, we have to get some of them out of the process in order to make it workable.*

**(8) "Existing uses"**

*Existing uses are the bottom line in terms of how far degradation can go (see 75-5-303 (1), new language).*

**(9) "High quality waters"**

*Again, as in (3) above, this serves to clearly show all waters are protected by the nondegradation policy with the same caveat regarding nonsignificance.*

**(11) "Interested person"**

*The interested person definition limits those who can appeal the department's preliminary decision.*

**(13) "Mixing zone"**

*Mixing zones are a part of the current operating practice when permits are issued. When an effluent is discharged to a receiving water of higher quality it can't be mixed instantaneously, therefore, there is a mixing zone. The only way we know of to avoid this is to have the effluent identical in all respects (parameters) to the receiving water. Practically, this is not possible.*

(a) a showing would have to be made that no technologically and economically feasible alternatives are available that would not degrade state waters. Obviously economics come into play here. When EPA makes these kinds of determinations they typically look at things which are "generally affordable" to a particular kind of industry or development. If it is generally affordable, it would be required regardless of the individual financial circumstances of the applicant.

(b) a 'balancing' would have to be made showing the benefit to society from allowing the development to go forward exceeds the cost of losing, to the extent authorized by the department, the high quality water. This should be examined, we believe, on a state-wide basis rather than just by looking at the benefit to the local area. The constitution gives ownership of the waters to the state, so this seems appropriate to us.

(Establishing criteria and making these kinds of determinations are, to some extent, subjective in nature and more easily said than done.)

(c) a determination would have to be made that, if the authorization to degrade were granted, existing and anticipated uses would be fully protected.

(d) and, as mentioned earlier, the least degrading water quality protection practices determined by the department to be economically and technologically feasible would have to be in place as a condition of authorizing the degradation.

(4) This is a procedural issue.

(5) This section allows challenges to the department's decisions.

(6) This section requires the department to revisit the authorization every five years. It would be possible that, upon a five year review, the department would determine a higher level of technology or some other water quality protection practice would have to be put in place. If uses were shown to be impaired the authorization would have to be withdrawn or conditions would have to be applied which would correct the problems.

75-5-605. Prohibited activity. (c) This clearly makes it prohibited to degrade state waters without getting the authorization pursuant to 75-5-303.

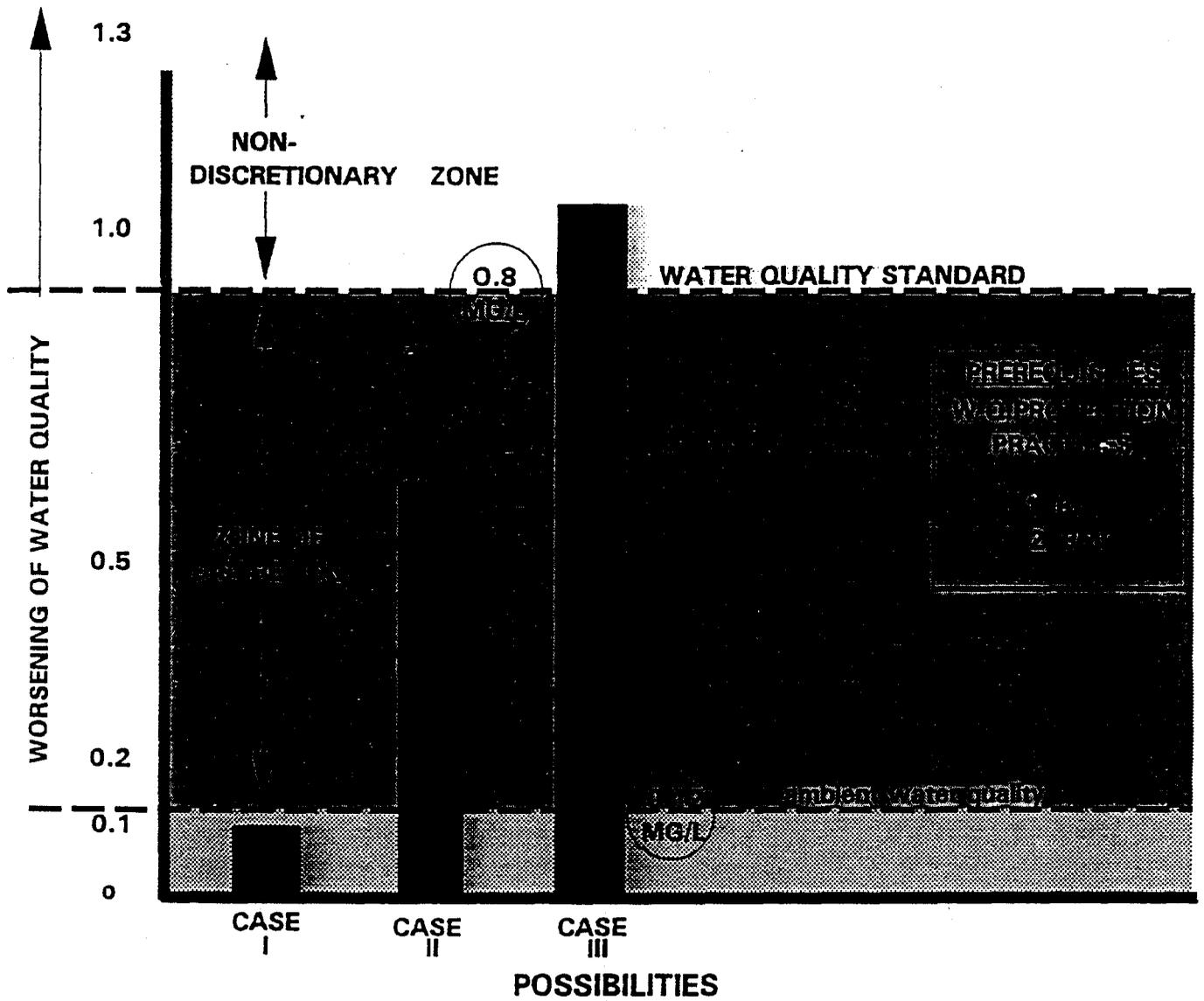


EXHIBIT 2  
DATE 4-2-93  
SB 401

## **EXPLANATION OF "POSSIBILITIES" GRAPH**

### **CASE I:**

***Minimum treatment requirements and best management practices are sufficient to produce an effluent which does not degrade the receiving water.***

***Nondegradation is not an issue.***

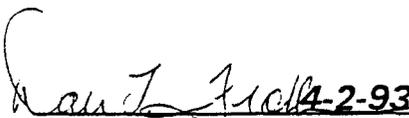
### **CASE II:**

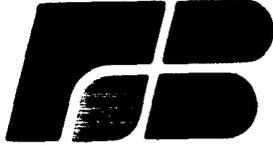
***Minimum treatment requirements and best management practices are not sufficient to ensure no degradation of the receiving water occurs. The nondegradation review process would be triggered. The applicant would have to:***

- 1. show that the degradation is necessary because there are no economically and technologically feasible alternatives which would result in no degradation;***
- 2. show the proposed project will result in important economic or social development that exceeds the benefit to society of maintaining the existing high-quality waters;***
- 3. the department will have to be satisfied that uses will be protected; and***
- 4. the least degrading water quality protection practices economically and technologically feasible will have to be implemented.***

### **CASE III:**

***In this example water quality standards are violated after minimum treatment and after water quality protection practices. The activity could not be authorized by the department.***

  
***Dan L. Fraser, P.E., Chief***  
***Water Quality Bureau***



**MONTANA FARM BUREAU FEDERATION**

502 South 19th • Bozeman, Montana 59715  
Phone: (406) 587-3153

EXHIBIT 3  
DATE 4-2-93  
HB SB 401

April 2, 1993

Mr. Chairman, members of the committee, for the record, I am Lorna Frank, representing over 4500 Montana Farm Bureau members throughout the state.

Farm Bureau supports SB-401 because we feel it will clarify the non-degradation water policy in the state as it applies to agriculture and other industries in the state. We feel SB-401 protects water quality and existing uses of water.

It sets up a formula which statutorily recognizes mixing zones. It is logical and makes sense to me that mixing zones be allowed.

Farmers and ranchers want clean water just like everyone else does. But the goal of zero water pollution is not realistic. Other factors such as the cost of pollution abatement, the needs of agriculture, and the need for growth in the state must also be considered.

SB-401 sets up a process whereby new and increased degradation has to undergo review to see if it actually causes degradation.

We feel SB-401 is a good bill and urge this committee to concur. Thank you.

  
\_\_\_\_\_  
Lorna Frank, Lobbyist

EXHIBIT 4  
DATE 4-2-93  
HB SB 401

Amendments to Senate Bill No. 401  
Third Reading Copy

Requested by Senator McClernan  
For the Committee on Natural Resources

Prepared by Michael S. Kakuk  
April 2, 1993

1. Title, line 14.

Strike: "A FEE"

Insert: "FEES"

2. Page 4, line 14.

Following: "75-5-301."

Insert: "All waters are high-quality water unless classified by the board within a classification for waters that are not suitable for human consumption or not suitable for growth and propagation of fish and associated aquatic life."

3. Page 9, line 16.

Following: "75-5-303(3)."

Insert: "These criteria must be established in a manner that generally:

- (i) equates significance with the potential for incremental impacts or cumulative impacts to human health or the environment;
- (ii) considers both the quantity and the strength of the pollutant;
- (iii) considers the length of time the degradation will occur; and
- (iv) considers the character of the pollutant so that greater significance is associated with carcinogens and toxins that bioaccumulate or biomagnify and lesser significance is associated with substances that are less harmful or less persistent."

4. Page 12, lines 5 through 10.

Strike: "THE" on line 5 through "SECTION." on line 10

Insert: "Every 5 years, the department shall review authorizations to degrade state waters. If the department determines that the standards and objectives of 75-5-303 or the rules adopted pursuant to 75-5-303 are not being met, it shall revoke or modify the authorization. A decision by the department to revoke or modify an authorization may be appealed to the board."

5. Page 13, lines 12 through 15.

Strike: Section 6 in its entirety

Insert: "NEW SECTION. Section 6. Fees required for nondegradation application, monitoring, and enforcement.

- (1) Application fees for authorization to degrade state waters and fees for authorization review under 75-5-303(6) may not exceed the following:
  - (a) \$2,500 for domestic sewage treatment plant

discharges;

(b) \$5,000 for industrial discharges; and

(c) \$200 per lot for subdivisions reviewed under Title 76, chapter 4.

(2) The minimum annual monitoring and enforcement fee for degradation authorizations is \$250 and may not exceed \$2,500 per million gallons discharged per day."

6. Page 13.

Following: line 20

Insert: "NEW SECTION. **Section 8. Coordination instruction.** If House Bill No. 388 is passed and approved and if it requires the department of health and environmental sciences to impose and collect fees for authorizations to degrade state waters, then [section 6 of this act] is void."

Renumber: subsequent sections



EXHIBIT 5  
DATE 4-2-93  
# SB 401

**Western Environmental Trade Association**

TESTIMONY BEFORE THE  
HOUSE NATURAL RESOURCES COMMITTEE

SB 401  
WATER NONDEGRADATION REVISIONS

April 2, 1993

Mr. Chairman, Members of the Committee, my name is Peggy Trenk and I am speaking today in support of SB 401 on behalf of the members of the Western Environmental Trade Association.

Our association has been working with representatives of various industries and interest groups for more than a year to try to find the most appropriate means to bring some clarity to Montana's nondegradation policy. We got involved, and we've stayed involved, for a couple of reasons.

First, it was clear that while the existing law had yet to be enforced in a consistent manner, it did apply to every activity undertaken in this state, whether it involved municipal water treatment facilities, cattle feedlots and family ranching operations, installation of septic tanks, timber harvests, or even some forms of recreation. We quickly came to understand that without a more rational process for implementing the law, Montana was running a real risk of bringing economic activity to a halt.

The second reason our members made this issue such a priority is that we wanted to make sure all interests were treated equitably under the law. In particular, we wanted to make sure that any changes made in the existing law or regulations would not inadvertently harm one industry while attempting to deal with the concerns of another.

We believe SB 401 addresses many of the problems we've found with the current law and it does so in an equitable manner. It does not repeal the nondegradation law, nor does it give anyone a "license to pollute" as some would have you believe. Rather, it gives all of us, the Water Quality Bureau, the regulated community, and the public a rational process to follow to protect water quality and to protect the economy.

That balance is ultimately what the majority of Montanans want to achieve. Last April we commissioned a poll to explore public concerns with regard to the nondegradation issue.

The results illustrated that the public does support the law, but it also supports the exemption process for those activities that provide economic and social benefit. Those surveyed also made it clear they did not favor regulations imposed under the nondegradation law that could limit or stop many development activities.

EXHIBIT 5  
DATE 4-2-93  
SB 401

Page 3

The survey concluded: "Montanans believe the quality of their water is high. They want to keep it that way. They believe there should be a rational process for exemptions to water quality standards that meet social and economic needs while protecting the quality of drinking water and aquatic life and habitat. They do not support a rigid, strict interpretation of the nondegradation standard to the detriment of the state's major industries."

Please vote yes on this important legislation. On behalf of our membership, I'd like to thank you again for the opportunity to testify.

# Northern Plains Resource Council

## VOTE "NO" ON SB 401

Monday, March 29, 1993

EXHIBIT

DATE 4-2-93  
# SB 401

The Department of Health and Environmental Sciences (DHES)--with the vigorous support of the mining industry--has succeeded in passing SB 401 out of the Senate Natural Resources Committee. This bill would abandon a twenty-year policy of protecting, maintaining and improving Montana's water resources, and clear the way for multinational mining companies--and other new or increased pollution sources--to apply for routine exemptions to the the state's "nondegradation policy", which is the heart of Montana's Water Quality Act.

### Should Montana start granting routine water quality exemptions at a time when:

- \* accelerated growth in popular regions of the state--e.g., the Flathead, Gallatin and Paradise Valleys--threatens the very qualities that makes those areas popular?
- \* several enormous open pit mining projects and expansions threaten some of the most pristine streams left in Montana--streams that are the essential headwaters for the rest of the State?
- \* Governor Racicot has fought to slash coal impact funding for years of groundwater monitoring in the Eastern Montana coal fields?
- \* Congress is about to rewrite the federal Clean Water Act to develop and impose best management practices for nonpoint sources of pollution such as agriculture and logging?
- \* state agencies' budgets are being cut to the bone, even though they cannot adequately enforce environmental protection laws with their current budgets?

While DHES and the mining industry insist that SB 401 is necessary to "clarify" the current law, the bill goes far beyond mere clarification.

### REPEALING THE CURRENT NONDEGRADATION POLICY

Instead of merely "clarifying" procedures, as the Department claims, SB 401 totally repeals the Water Quality Act's current nondegradation policy contained in the two paragraphs in section 75-5-303, MCA [See page 9-10, Section 3, of SB 401], and substantially weakens the Water Quality Act. It strikes the current requirement for new or increased sources of pollution "to provide the degree of waste treatment necessary to maintain...existing high water quality." SB 401 therefore repeals the current prohibition against new or increased sources obtaining exemptions from the nondegradation policy. But SB 401 doesn't stop there.

On page 4, line 25, SB 401 defines pollution "mixing zones" as areas "where water quality standards may be exceeded". This provision belies the mining industry's deception in the recent debates over exemptions to the nondegradation policy. Time after time, representatives of the mining industry insist that the mining operations applying for exemptions will only result in "minute" amounts of pollution--nothing more than "parts per billion" that are "not detectable"--and that they will not violate water quality standards. Yet here are the mining companies, working closely with the Department to pass SB 401 to get explicit authority to violate water quality standards -- not just to degrade down to standards.

Not to worry, the Department says. We will make sure that the size of the area where water quality standards will be violated is the smallest "practicable" size, and will have the minimum "practicable" effect on water uses (Page 8, lines 18 & 19). This is the same Department that allowed Noranda Minerals to violate water quality standards on Libby Creek in the Cabinet Mountains for a year and half without taking enforcement action. This is the same agency that allowed the Golden Sunlight Mine to spill hundreds of thousands of gallons of cyanide-laced effluent into the groundwater near Whitehall, ruining the water wells of two adjacent ranches, and then expanded Golden Sunlight's "mixing zone" to include the plume of cyanide in the groundwater to make it "legal"--never issuing a violation. Apparently the cyanide plume was determined to be the smallest size "practicable". And this is the same agency that--after their formal public review--negotiated water degradation exemptions behind closed doors with Chevron/Manville, and Noranda Minerals, that are good for five years beyond the life of both mines. Even if new water treatment technologies become available, neither company will be required to use them, because the Department of Health wrote it into both their exemptions that they don't have to.

The reality is that for 20 years the Department of Health has routinely granted these mixing zones even though the current law provides no authority to do so. The Department of Health refused to cite its statutory authority to grant mixing zones when formally requested to do so by the Environmental Quality Council last year. Now that the Department has been sued over this practice, its response has been to introduce legislation to grant itself the authority after the fact.

The Department believes it must have the discretion to grant mixing zones for new or increased sources of pollution, because, they say, it's impossible to permit such sources without violating water quality standards. Yet Chevron/Manville has stated publicly that it could have treated the discharges for its proposed platinum mine on the East Boulder River to prevent degradation. The company was given the exemption anyway.

These provisions allowing new and increased sources of pollution to violate water quality standards fly directly in the face of the Montana Constitution, which mandates that the "legislature shall provide adequate remedies for the protection of the environmental life support system [which includes water resources] from degradation...."

## NONDEGRADATION AND EXISTING SOURCES OF POLLUTION

A major unresolved issue raised by SB 401 is how implementation of the nondegradation policy will affect existing sources of pollution. SB 401 (DHES), would shift the burden of maintaining Montana's high water quality from new or increased point sources of pollution (such as mines), to existing point sources (such as municipalities), and to existing nonpoint sources (such as agriculture and logging). This is primarily because a current state rule--which is mandated by the federal Clean Water Act--requires that:

In allowing such degradation or lower water quality, the board [of Health] shall assure that within the basin upstream of the proposed degradation there shall be achieved the highest statutory and regulatory requirements for all point and nonpoint sources [of pollution]. [ARM 16.20.702 (2)] [Emphasis added]

The Department of Health has been unable to explain how it will review all upstream sources of pollution, e.g., farmers, ranchers, loggers, municipalities etc., to ensure that they shall achieve best management practices that will meet this requirement. Nevertheless, in order to make it routine for new large-scale mining projects to obtain exemptions to the nondegradation policy, SB 401 would further confuse what's required of existing nonpoint sources of pollution by both federal and state law.

SB 401 would also set the stage for substantial political pressure to be brought to bear on individual existing sources to "clean up their act", so that new large-scale pollution sources--such as municipalities and mines--can get their exemptions. For example, if through obtaining an exemption, Billings could save millions of dollars by not having to treating its increased waste water discharge, the city would likely wield greater political power than the dispersed individual sources upstream. That political power will soon likely be bolstered by some form of mandatory best management practices that will become enforceable after the expected reauthorization of the Clean Water Act in this session of Congress. Passage of SB 401, with language explicitly allowing exemptions for new or increased sources of pollution, would significantly change the Water Quality Act without resolving its full implications for existing point and nonpoint sources.

**There is a better way:** SJR 29--which has passed the Senate Natural Resources Committee--would place these important, complex and controversial issues into a two-year interim study by the bipartisan Environmental Quality Council (EQC). An EQC study would allow all affected water users a forum through which to participate on these important issues, and would allow for a thorough review and analysis of:

- \* whether new or increased sources should be allowed to degrade high quality waters or to obtain mixing zones that violate water quality standards;
- \* how mixing zones can or can not be used in the implementation of the Montana Water Quality Act and still be constitutional;
- \* how farmers, ranchers, loggers and other existing water users will be affected by the new rule mandating that upstream sources of pollution achieve highest statutory and regulatory requirements before exemptions are granted; and
- \* upcoming changes in the federal Clean Water Act that may mandate best management practices for nonpoint sources of pollution. An EQC study would give all Montanans the opportunity to participate in the development of best management practices that could positively influence how nonpoint sources of pollution will be regulated at both the federal and the state levels.

**--VOTE "NO" ON SB 401--**

# MSU study finds quality of life, not tax breaks, lures jobs

■ **Montana: Rural setting, clean environment are big pluses**

By MICHAEL MILSTEIN  
Gazette Wyoming Bureau

**BOZEMAN** — Striking at the conventional wisdom of economic development, a new Montana State University study reveals that tools like tax breaks, free land and low interest loans play a negligible role in luring businesses to Montana and surrounding states.

Most firms coming to or staying in the region are attracted by its pristine environment and rural way of life — and little else. All that gives them pause is Montana's workers compensation fiasco.

To attract new jobs, develop-

ment boosters should focus on protecting those attributes before expending energy on dubious business-friendly tactics like deregulation and cash incentives, conclude the study's authors, Jerry Johnson and Raymond Rasker, both of Montana State.

That's also critical now since people moving into the region, creating its "New Economy," may not value its qualities as highly as old-timers.

"Communities don't have to buy jobs through tax incentives, they can do it by preserving what they already have," said Johnson, a Montana State professor of political science. "People aren't coming here to get rich, they're coming here to enjoy themselves."

A case-in-point is Larry Johnson, president of ILX Lightwave Corp., a laboratory equipment maker that

employs 45 people in Bozeman. He moved from Minnesota to start the business for one reason.

"Lifestyle is the simple answer," said Johnson, who wanted to live within an hour of prime ski and hiking areas. "To tell you the truth, we didn't even look at the tax structure in Montana."

Many have long suspected the region's quality of life attracts new business, but no one knew how important it is. That's why professors Johnson and Rasker did a random survey of almost 500 business owners and managers in Montana's Park, Madison and Gallatin counties.

The as-yet-unpublished study, which had a 95 percent response rate, was funded by the College of Letters and Science and Yellowstone Center for Mountain Environment & Montana State and the private, Montana-based Farwood Foundation.

Authors focused on the three

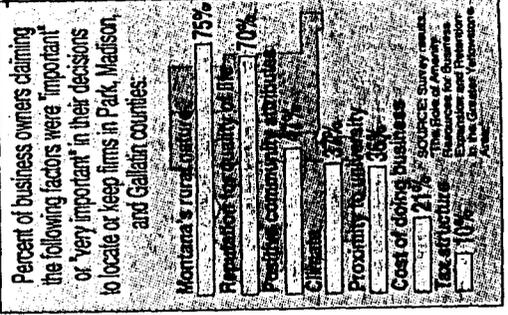
Montana counties as an example of a growing rural area. It's part of a region around Yellowstone National Park that has added 64,000 jobs in the last 25 years, 96 percent in sectors besides traditional industries like mining, manufacturing and agriculture.

Over half of the people filling the 15,100 new jobs created there since 1980 are self employed. Many are in small, "footloose" firms that depend on access to computers and telephone lines.

"It's important for Montana to understand what's driving this 'New Economy,'" Johnson said. If it's quality of life, we'd better protect that."

The results, which he thinks hold true for most of Montana and surrounding states, confirmed that quality of life does draw new firms. But some findings were unexpected:

EXHIBIT 7  
DATE 4-2-93  
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## Continued story

# Study

From Page One

■ "Old-timers" here more than five years consider Montana's rural values and environmental quality even more important than do "newcomer" residents of less than five years who were lured by those values.

■ Those surveyed did not link scenic values to public lands here. "They don't think of Forest Service land as scenery," said Johnson. "I

don't know who they think owns the scenery or who's going to protect it."

■ Native and non-native residents have started the same types of businesses. Non-natives, for instance, are not creating any more high-tech or boutique gift shops than natives.

■ Tourism, while not really prompting new businesses, helps bring new firms by exposing outsiders to the region's qualities.

The survey proves conventional economic theories — that growth is fueled by raw materials and low labor costs — do not hold for rural areas. Many surveyed said they could tally higher profits in bigger metro-

politan areas, but instead came north for more "fuzzy" quality of life reasons that mainstream economists often overlook, Rasker said.

In fact, many business owners got irritated with pollsters from Montana State's Survey Center when they kept asking about economic factors like tax rates and the cost of doing business.

"So much for theory," said Rasker, an adjunct professor at Montana State and resource economist for The Wilderness Society. "If you're going somewhere to make money, you'll probably go somewhere else."

About 60 percent of business timers was in how they valued the

area's attributes.

In every case, established residents ranked factors like "Quality of environment," "Scenic beauty," "Low crime rate" and "Rural setting" as more important than newcomers did.

That's likely because many of the newcomers, those here less than five years, moved from crowded urban zones where "anything would be an improvement," Johnson surmised. It may become more difficult to protect the region's unique values if newcomers "are willing to settle for lower quality," he said.

Still, the best way to fuel economic growth is "to protect our cultu-

ral values" — whether it be maintaining open space for agriculture, providing recreational opportunities or keeping historic downtowns from losing to malls, Rasker said. "That's really what the chambers of commerce should be looking at."

Business boosters also must remember that local values are even more important to keeping long-term businesses. Sacrificing those qualities by overdeveloping an area could backfire.

"It's a real fine line," said Johnson. "How much business recruitment can you do before you start to foul your own nest?"

EXHIBIT 8  
DATE 4-2-93  
HB SB 401

## Tawney & Dayton

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Peter Michael Meloy (M.L.)  
of Counsel

March 9, 1993

Senate Natural Resources Committee  
Nondegradation Subcommittee  
Capitol Station  
Helena, Montana 59620

RE: SB 401 - Weakening Montana's Nondegradation Policy

Dear Subcommittee Members:

I represent the Northern Plains Resource Council, an agricultural-conservation organization that has been actively involved in efforts to preserve and protect Montana's resources and quality of life for over twenty years. My comments address significant legal issues raised by the proposed legislation to weaken Montana's nondegradation statute. In short, the Montana Constitution expressly prohibits the Montana Legislature from passing any legislation which allows degradation of our essential life support system, including water. Mont. Const. Article IX, Section 1.

Montana's nondegradation policy was adopted in substantially its present form, in 1971. The statute currently provides as follows:

"75-5-303. Nondegradation policy. The board shall require:

(1) that any state waters whose existing quality is higher than the established water quality standards be maintained at that high quality unless it has been affirmatively demonstrated to the board that a change is justifiable as a result of necessary economic or social development and will not preclude present and anticipated use of these waters; and

(2) any industrial, public, or private project or development which would constitute a new source of pollution or an increased source of pollution to high-quality waters, referred to in subsection (1), to provide the degree of waste treatment necessary to maintain that existing high water quality." [Emphasis added.]

This statutory provision requires new or expanded sources of pollution to provide waste treatment to maintain the existing

high quality of Montana's waters.

In 1972, Montana adopted its new constitution. The section requiring the Legislature to prevent degradation of Montana's air, land, and water states as follows:

Protection and improvement. (1) The state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations.

(2) The legislature shall provide for the administration and enforcement of this duty.

(3) The legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources. [Emphasis added.]

Mont. Const. Article IX, Section 1. The framers of our Constitution distinguished "natural resources" which cannot be unreasonably depleted, from our "environmental life support system" which cannot be degraded.

The history of the Constitutional Convention supports the position that the Montana Legislature cannot provide for the degradation of Montana waters. The comments on the majority proposal clarify that this section applies to water, and that Montana's waters cannot be degraded:

Subsection (3) mandates the legislature to provide adequate remedies to protect the environmental life support system from degradation. The committee intentionally avoided definitions to preclude being restrictive and the term "environmental life support system" is all encompassing including, but not limited to air, water, and land and whatever interpretation is afforded this phrase by the legislature and courts; there is no question that it cannot be degraded. [Emphasis added.]

Vol. II, *Proceedings of Constitutional Convention of State of Montana*, pg. 555 (1971-1972). This prohibition on degradation is further supported by comments of Delate C.B. McNeil from Polson, who stated that, "our intention was to permit no degradation of the present environment of Montana and affirmatively require enhancement of what we have now." Vol. IV, *Proceedings of Constitutional Convention of State of Montana*, pg. 1205 (1971-1972).

NPRC Nondegradation Comments  
March 9, 1993  
Page 3

EXHIBIT 8  
DATE 4-2-93  
SB 401

The Health Department bill sponsored by Senator McLernan clearly provides for the degradation of Montana's waters in violation of Montana Constitution.

Rather than precipitously rush to amend a twenty-year old statute, and risk raising serious constitutional questions, we recommend that the nondegradation issue be referred to the Environmental Quality Commission for an interim study.

Please feel free to call me if any of you have additional questions regarding this matter.

Sincerely,

TAWNEY & DAYTON



Grant D. Parker

GDP/tih

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HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Natural Resources

COMMITTEE

BILL NO. SB 401

DATE 4/2/93

SPONSOR(S) SEN. MCCLERNAN

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Jim Mockler	MT. Coal Council	SB 401		✓
REX MANUEL	CENEX	SB 401		✓
Shelly Laine	City of Helena MT League of Cities/Towns	SB 401		✓
Lorna Frank	MT. Farm Bureau	SB 401		✓
Ed Waller	MEA	SB 436		✓
Lois Batt	MEA	4		✓
Peggy Trenk	WETA	SB 401		✓
Nancy LeBlanc	H			
J.V. Bennett	MT. Wildlife Fed.	SB 401	✓	
Mark Jamison	Millesson Land Co	SB 401	✓	
Don Lee	OTHS	SB 401		X
David Owen	mt chamber of comm.	401		✓
Dennis Olson	NPRC	SB 401	✓	

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HOUSE OF REPRESENTATIVES

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DATE 3/4/93

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Russ Ritter	MRA	401		X
Bob Williams	Mont Mine	401		✓
Jim Jensen	MEIC	401	✓	
Janelle Fallon	MT Petroleum	401		X
Leo Berry	En Tech			✓
Don Allen	Mont. Wood Products Assn	401		X
John Bowman	MARA	401		✓
John Bloomquist	MT. Stockgrowers	401	✓	✓
Regina Keller	Regal Water Co. Rancher			✓
Mary A Canale	MONTANA MINING ASSN.	401		✓
PAMELA LANGLEY	MONTANA AGRICULTURE BUSINESS ASSN.	401		✓

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