

**TESTIMONY
BEFORE THE HOUSE NATURAL RESOURCES COMMITTEE**

House Bill No. 206

**Jack Stults, Administrator
Department of Natural Resources and Conservation
Water Resources Division**

January 19, 2005

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO THE DESIGNATION AND OPERATION OF CONTROLLED GROUND WATER AREAS PROVIDED FOR UNDER THE WATER USE LAWS; ... AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Introduction

Representative Noonan agreed to carry this bill on behalf of the department, and I want to thank him for his willingness to do so.

Discussion

This bill is to revise the statutes related to Controlled Ground Water Areas. Controlled ground water areas can be proposed by local water users, state or local health agencies, or by the Department of Natural Resources & Conservation. The two primary reasons for proposing a controlled ground water area are related to ground water availability and ground water quality. Currently, there are 16 controlled ground water areas located in Montana; 9 are controlled because of water quality problems, the other 7 are controlled because of water availability problems. Three of these areas are temporarily closed to allow for ground water studies, to identify the cause of reduced ground water supplies.

The controlled Ground Water Area statutes have been part of Montana water law since 1961. The first ground water closure was granted in 1967 by the State Engineer's Office, the predecessor to the DNRC's Water Resources Division. It was the South Pines Controlled Ground Water in Wibaux County and was granted because of dwindling ground water supplies in the area. Also worth noting is the Powder River Basin controlled ground water area put in place in 1999 in anticipation of development of coal-bed methane to protect existing water wells in the area.

The ability to designate controlled ground water areas has been very beneficial. Most people thought the laws would be used primarily for water availability concerns. In fact, today there are more controlled areas based on water quality concerns. That leads directly to the main purpose of this bill.

Currently the statute requires all ground water diversions to go through the full water rights permitting process if within the boundaries of any control area, either temporary or permanent. The permit application is effective for use in ground water areas where water availability is a concern because one of the criteria that must be met before a permit can be

granted is a showing that water is available in the amount requested. However, if a controlled area is granted for water quality problems, the permit application criteria are extraneous and unnecessary. This bill would continue to allow that a permit application process could be used, however, the bill changes the statute to also allow that the order issued for the controlled area could include requirements that address only the circumstances for the specific area.

Another change proposed by this bill is to allow up to 6 years for ground water monitoring. Current statute limits ground water monitoring to 4 years. Ground water characteristics are difficult to monitor and are often times directly related to climate patterns. Monitoring needs to be for a length of time that will be best for gathering the required information on which to base a decision for a permanent ground water closure.

Current law designates some corrective control provisions that can be included in an order designating a controlled ground water area. For example, a provision can be added stating that the department cannot accept any applications for ground water within the area or can limit withdrawals or designating a total withdrawal by day, month or year. This bill adds a few more provisions, such as a well spacing requirement, well construction constraints, or that department approval is required before drilling a well. These requirements have been placed in orders, and are especially useful in preventing the spread of pollution.

Finally, the bill sets forth who is responsible for the ground water study costs, when a study area is warranted. Current statute does not clearly identify that the costs may need to be borne by those who will be directly impacted by the ground water study. This bill changes the statute so that petitioners know right away of their obligation to take the lead in seeking and acquiring funding, including researching grants and forming partnerships, to cover the costs of ground water monitoring.

Conclusion

The controlled ground water area statutes have provided a very effective mechanism for managing ground water quality and quantity problems. The amendments proposed in this bill improve the effectiveness of the statute. The DNRC urges the Committee to adopt these amendments to the controlled ground water area statutes. Please give HB206 a "do pass" recommendation from the committee.