

**Testimony of Kathy Gallagher, Principal Hydrogeologist (SPSI, Bozeman)
January 19, 2005**

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EXHIBIT
DATE 1-19-05
HB 206

Thank you for the opportunity to testify on HB 206. I am speaking on behalf of the petitioners (including myself) of the Sypes Canyon Temporary Controlled Groundwater Area (CGWA), located north of Bozeman.

While I have a number of issues with the current and proposed legislation, I would like to focus on two areas:

- 1.) The added provision in 85-2-507(5)(a) to require petitioners to pay for groundwater studies, and
- 2.) The corrective controls listed in 85-2-507(4) and referenced in (5)(a).

My initial concern upon reading the proposed bill is the clause requiring that petitioners granted a temporary groundwater study be responsible for the cost of a groundwater study that would be under the supervision and control of the DNRC. This will virtually eliminate the use of the CGWA provision in the law since it is unlikely any petitioners' group could afford to sponsor a groundwater study. If the DNRC can't afford to do the studies, how do they expect the people to foot the costs? Please recall Montana's placing on the median income list for the United States.

The most difficult part of losing the CGWA in practice (it would obviously still be on the books), is that it is the only provision in the law that allows for characterization of an aquifer system, not just a subdivision-sized piece of the aquifer. Only by looking at the aquifer as a whole can sustainable yields be determined. DNRC has continued to appropriate groundwater in high growth areas, such as Sypes Canyon, without an understanding of the amount of water available.

We initiated our petition in 2000 because a number of wells in our area were going dry. As part of the petition process outlined in 85-2-306, the petitioners are required to provide adequate data showing adverse impacts to the aquifer for the process even to proceed. Had we not had a qualified hydrogeologist, (me), it is unlikely the residents would have had the technical knowledge to even file the petition. And despite numerous pleas to the DNRC from residents with declining water levels or failing wells, no assistance was provided by the department other than a sympathetic ear and the recommendation to hire a hydrogeologist and petition for a CGWA.

We did proceed with the petition and hired an attorney to represent us at the hearing. While I donated my time, the group had to pay for the substantial legal fees. Had I billed for my time, the group would have paid over \$10,000 in professional fees to get through the initial petition process and hearing. We were granted a temporary CGWA, but filed an appeal to get a corrective control measure to protect our groundwater during the study period. Our appeal failed. The only provision DNRC applied was that all new wells had to be permitted prior to drilling. All fees collected were for these permits (\$200-\$400 were placed in the general fund).

The DNRC, while required under 85-2-306(5)(b) made little progress in initiating the "studies necessary to obtain the facts needed to assist in designation of a permanent CGWA." A flume was installed in Sypes Canyon Creek and the Gallatin Local Water Quality District collected infrequent water levels in a small portion of the study area. In fact, study area-wide data

collection was not initiated until well into the two-year extension period, and it is questionable whether adequate data can be collected in the remaining time to make reasonable conclusions on the aquifer's sustainability.

In the mean time, since no limitations were specified by the DNRC order, well construction seemed to escalate in the area. Additionally, a water rights application for a large housing development adjacent to the most impacted area was filed. A group of residents filed objections to the application and over \$25,000 was required to fight the water right. This included over \$10,000 of objectors' money for professional fees and more than \$15,000 in donated hydrogeologist fees as well as a portion of legal fees. The water right was not granted and the applicants filed an appeal. Therefore, we had additional costs responding to their appeal, which they also lost. Since none of the applicants' legal or professional fees were donated, their costs were likely in excess of \$50,000 not including initial hydrological studies for their subdivision (>\$100,000).

So, after about three years, the area residents had provided between \$35,000 to \$40,000 in direct contributions and in-kind services and still knew nothing more about the sustainability of the aquifer. It is beyond the ability of any area residents, except possibly the most affluent in the state, to provide funding for a groundwater study. Also, few neighborhoods have their own hydrogeologist.

The DNRCs mission is not only to appropriate water but also to protect the State's water and its senior water rights holders. Without knowledge, protection is impossible while appropriation continues without pause. We need a strong agency with qualified people to evaluate impacts caused by rapid growth and drought.

So what do we do?

We feel the proposed provision creates undue burden on the State groundwater users. Therefore, we urge you to strike the modification to the existing rules to require payment of the study costs by petitioners. We urge the DNRC to make a case for badly needed additional funding for adequate staff to review groundwater applications. At last count only two hydrogeologists were on staff to cover the entire state, a groundwater dependent state. My personal preference would be to take away the groundwater, and even surface water, responsibilities from the DNRC and delegate these responsibilities to an agency with more "teeth," such as the DEQ.

Regarding my second concern, corrective controls, I would suggest that corrective controls be required whenever a temporary or permanent CGWA is designated. This would have saved both the applicants and objectors tens of thousands of dollars. We suggest that the term "may" on page 6, lines 2 and 27 be changed to "shall" in order to protect groundwater while studies are being conducted.

It is time for the lawmakers and funds appropriators to give groundwater the attention and importance it deserves as the primary source of drinking water in this state. Depleting aquifers is unacceptable under any law and violates Article IX of our State Constitution. We need to be drafting legislation to ensure sustainable aquifers for current and future users, not creating laws to discourage state residents from protecting their often stressed groundwater supplies.