

House Natural Resources Committee  
Hearing on House Bill 251  
January 22, 2005

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HB 251

Testimony of Stephen R. Brown  
In Opposition to HB 251

Mr. Chairman, members of the Committee, my name is Steve Brown. I am an attorney with the law firm Garlington, Lohn & Robinson, PLLP in Missoula. I testify today on behalf of Yellowstone Mountain Club and the Club at Spanish Peaks. Both of these organizations are recreational and residential communities in the Big Sky area. While we agree with the comments of others who oppose this bill, I offer a few other specific points for you to consider.

No one disputes that the Gallatin River is a very special amenity that is used and enjoyed by a broad segment of Montanans and out-of-state visitors. The original ORW petition submitted by American Wildlands eloquently describes some of the river's virtues and we largely agree with these descriptions. We are not here today to discuss the Gallatin's water quality or to dispute the merits of the petition; rather we are here because we disagree with the approach proposed by this bill.

When the 1995 Legislature added the outstanding resource water provisions to the Water Quality Act, it automatically designated ORWs within national parks and designated wilderness areas. It also allowed ORWs to be designated through multi-stage petition process. The petition process includes the requirement to prepare an environmental impact statement to carefully evaluate the effects of an ORW designation. In 2003, the Legislature modified the statute to add the requirement that petitioners arrange for funding of the EIS.

Because the Gallatin River petition was submitted before the 2003 legislation, the petition requires an EIS, but does not require that the petitioner pay for it. Instead, under the terms of the original legislation, the obligation to conduct and fund the EIS rests with the State. This bill does not create a funding mechanism. Instead, what the bill does is say the State cannot figure out how to solve this problem, so it's going to penalize the Big Sky community by imposing a permit ban.

When combined with the lack of a funding mechanism for the EIS, the permit ban effectively amounts to a backdoor ORW designation that circumvents the EIS process. The Legislature deemed the EIS process essential to ORW petitions and never has created special exceptions in the past. All other ORW petitions must undergo a rigorous analysis of potentially adverse environmental, social and economic impacts before the designation can be made. Other than the lack of funding, which is a state not a local issue, there is no reason to exempt this petition from the normal review process.

The Big Sky area residents and businesses are not the people who should be punished for the lack of funding. No other community in Montana is subject to a permit ban like this and there is no apparent reason to single out Big Sky. These people have worked hard to protect water quality over the last few years. For example, in 2002, Big Sky residents overwhelmingly passed a bond issue to fund construction of an advanced sewage treatment plant that eliminated all direct discharges to the Gallatin River. Water quality monitoring that has occurred over the past few years shows that the water quality in the river remains exemplary.

The bill also is flawed because the moratorium it imposes will result in chaos and litigation. For example, the legislation certainly would ban new community systems in the Gallatin Canyon. Under current law these systems must be carefully engineered and must go through a nondegradation analysis. If they cannot meet the current nondegradation standard, the permit will be denied. If these systems are subject to an outright ban, however, the end result likely will be more individual septic systems, which will result in an overall net negative environmental impact.

The scope of the permit ban also could extend well beyond Big Sky. For example, construction projects over one acre in size must be authorized under the Montana general stormwater discharge permit for construction projects. This general permit applies to Big Sky and the rest of the state. This permit must be renewed every five years. In two years when the permit is renewed, it might be banned under this legislation, which would create a situation where no construction authorizations could be issued state-wide. Either that, or DEQ would have to begin writing general permits that carve out Big Sky as if it were some kind of second-class territory. More than likely, someone will disagree with DEQ's interpretation and costly litigation will result.

In summary, this bill uses the wrong process to solve a problem that the Big Sky community did not create. We urge you to oppose this bill.

Thank you.