EXHIBIT 5
DATE 2.14.05
HB 608

Testimony for H.B. No. 608, An Act Providing that an adverse effect must be measurable when addressing a new appropriation right or a change in appropriation right.

Testimony presented to the House Natural Resources Committee
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February 14, 2005

Mr. Chairman, Committee Members, The bill under discussion is a simple bill that represents primarily a housekeeping bill. The term "adverse effect" appears throughout the compacts that have been adopted to date as well as in statute. The purpose of this bill is to clarify existing statute and rule. This proposed bill makes it clear that predicted changes in water level or flow rates in surface water sources due to a new appropriation or change must be measurable, if they are to be determined to adversely affect an existing appropriator or reservation.

Most of the management or enforcement that occurs on irrigation systems or on our water sources is based on measured impacts. Water is typically measured with weirs, flumes, and flow meters to determine how much water an existing water right holder is getting. These measurement devices typically have a measurement error of 5 – 10%. The purpose of this bill is to apply the same standard to the evaluation of new appropriations or changes. The proposed bill does not set a specific standard because our ability to measure water improves with time and the value of the resource. The bill allows for improved measurement accuracy over time.

We routinely use various calculation methods to estimate impacts. These methods are only as good as the data we use. The data is limited by our ability to measure water level or flow changes. Because we use calculators that calculate to 8 or more decimal places there are those that feel the results are far more accurate than they really are. Since we base the estimated impacts on actual measurements, it is only reasonable to determine adverse impact within our ability to measure the response. A typical flow meter

measures within 5% of the actual flow. At 100 gallons per minute, the error is plus or minus 5 gallons per minute. It is not any more difficult to calculate an impact of 0.01% which results in a flow rate change of plus or minus 1 gallon per minute which we cannot measure with normal equipment. The standard is not stated in the Code and, in some instances, a theoretical value is used. Theory is a suggestion but is not a fact until it is confirmed by measurement.

The proposed standard is useful because it can be field verified. In the event adverse impact is disputed, a simple solution is available, turn on the pump and measure the impact. Without a measurable standard, there is no way to actually verify that the impact exists. Professionals in the field will continue to estimate impacts using various analytical methods, this bill states that the impact has to be measurable.

This bill merely proposes that common sense be applied to water resource management in Montana and that we use a standard for adverse impact that is enforceable. I support this bill and request favorable action by the committee.