

**COMMENTS ON SB 407
On Behalf of the
TONGUE RIVER WATER USERS' ASSOCIATION
By Brenda Lindlief-Hall**

**BEFORE THE HOUSE FEDERAL RELATIONS, ENERGY, AND
TELECOMMUNICATIONS COMMITTEE
April 2, 2007**

Dear Chairman and Members of the House Federal Relations, Energy, and Telecommunications Committee:

Thank you for the opportunity to submit this testimony on SB 407, and for taking the time to read it.

FACTUAL BACKGROUND

Before addressing the provisions of SB 407, it is essential to first provide some background regarding Montana's water quality standards (WQS). In that regard, I offer the attached letter from the U.S. Environmental Protection Agency (EPA) for your consideration. As you can see from the attached letter, the EPA has serious concerns about SB 407, as well as HB 383. The EPA's concerns over both of these bills arise from the exemptions from Montana's water quality standards that SB 407 and HB 383 create for coalbed methane (CBM) produced water.

Montana's WQS were established in 2003 to protect the most sensitive beneficial uses of Montana's surface waters in the Powder River Basin, as required by the federal Clean Water Act (CWA), and the Montana Water Quality Act (WQA). The most sensitive beneficial use that required protection in the Powder River Basin was irrigated agriculture. The Tongue River Water Users' Association's members and many other ranchers, along with the nation's foremost soil scientists, worked for years with the Montana Board of Environmental Review to establish WQS necessary to protect agriculture in southeastern Montana.

As we Montanans all know, water is the lifeblood of the American West, and agriculture is the bedrock of Montana. High quality water is essential to the health and welfare of all Montanans. It is essential to our ability to protect agriculture and our economy. High quality water is also essential to protect Montana's ability to raise food and to remain independent from

large agricultural producers in other parts of the nation and world, and to maintain our economic independence in general.

Despite approximately four (4) years of grueling work to establish Montana's WQS, our sovereign ability to protect our water quality is under attack. Numerous companies, all of which participated in the process to establish the WQS, are challenging Montana's WQS in federal court in Wyoming and in Montana state court. The state of Wyoming, Pennaco Energy, Marathon Oil, Co., Nance Petroleum, Yates Petroleum, Anadarko Petroleum, and Fidelity Exploration and Production Company have all filed suit in seeking to undo Montana's water quality standards. Simply put, Montana and its agricultural community is under attack by out-of-state interests that are represented by high-dollar, out-of-state attorneys. These entities have no real interest in helping Montana ranchers. ***Their goal is disposing of their wastewater with the least cost, which ultimately means the least protection for Montana's lands, waters, and ranchers.***

What these companies should be doing is treating the water. None of the coalbed methane companies have provided a shred of evidence showing that they cannot afford to treat the water. They simply threaten to pull out of Montana when asked to treat the water, while at the same time they are buying up oil and gas rights at an unprecedented rate. Moreover, these companies can pass the cost of treatment on to the consumer, just as every other business passes on its costs of doing business.

It is important to recognize that none of these companies have any affiliations with Montana except for their oil and gas leases. Fidelity has perhaps one employee who lives in Montana. The other companies have no employees living and paying taxes in Montana, and none of their executives live in Montana. They are not paying taxes on their salaries in Montana or spending their money in Montana on food, shelter, clothing or other necessities. On the other hand, the ranchers that we should be protecting ***are*** paying property taxes, income taxes, and business taxes in Montana, as well as spending their hard-earned dollars in Montana. Our ranchers have been, and will remain here, for the long haul, but only if we protect them.

SB 407

Although this bill was initially couched in terms of discharges for emergencies, it has now been amended to simply provide for water for

livestock and wildlife. Certainly, this is a worthwhile goal, especially in this time of extreme drought. Unfortunately, SB 407 fails to provide any protections for Montana's waters, lands and ranchers. If the goal really is to provide water for livestock and wildlife, the most efficient means of doing so is to put the water in stock tanks or lined impoundments far away from streambeds. As drafted, however, ***SB 407 provides that CBM produced water can be freely discharged into any existing impoundments anywhere, without regard for the risks posed by such discharges, and without requiring any bonding, reclamation, or protections for Montana's surface waters or landowners.***

- Subsection (1) allows discharges into any existing impoundments, ***without regard for whether they are in-channel impoundments, without regard for the stability or design of the impoundments, and without regard for whether such impoundments may interfere with senior water rights*** by capturing high quality runoff water in impoundments with highly saline and sodic waters, rendering the runoff unfit for release to streams and rivers.
- ***Landowners have no protections under SB 407.*** Subsection (2) provides that "a person" may file a notice of intent to be covered by a general permit. It does not limit "a person" to a landowner who may want the water stored on their land. ***Some landowners with CBM development on their land may not want CBM water stored in impoundments on their land.*** Nonetheless "a person" such as a CBM producer, may discharge water into existing impoundments on the land, and nothing in SB 407 prohibits them from doing so. Additionally, ***even if a landowner has no livestock, a CBM producer on their land could nonetheless discharge water into existing impoundments on the land, ostensibly for wildlife.*** Landowners where CBM development is occurring have virtually no protection under SB 407.
- Under subsection (3), an authorization to discharge is good for 6 months of the year. However, ***it does not address what happens to the filled impoundments for the other six months of the year.*** Under SB 407(3), the ***discharges can occur for six months, and then the impoundment can sit filled for the***

rest of the year while the water evaporates leaving nothing but a saline seep. Because there are no design standards for the impoundments, there is significant potential for storm events to sweep through, carrying a briney, sodic mess into streams and tributaries and ultimately into Montana's rivers. ***This is not limited to southeastern Montana, but could occur anywhere CBM development occurs.***

- ***The exemption from Montana's water quality standards created by subsection (4), is unlawful,*** as the EPA pointed out in its March 22, 2007 letter.
- Subsection (5) requires compliance with Title 85, Chapter 2, the Montana Water Use Act, which is necessary, and should go without saying. However, because ***there are no design standards for bypass technology to prevent interference with senior water rights,*** this section is meaningless. ***The burden would be on senior water rights holders to defend their water rights.***
- Subsection (8) is virtually meaningless, because the discharges have been exempted from Montana's WQS under subsection (4).

SB 407 POSES A SIGNIFICANT THREAT TO THE TONGUE RIVER WATER USERS' ASSOCIATION AND OTHER RANCHERS AND LANDOWNERS IN MONTANA

Since 1937, the Tongue River Water Users' (TRWU) have had a contract with the State of Montana to purchase 40,000 acre feet of Tongue River water each year from the State for irrigation. The contract limits TRWU to using the water for irrigation, livestock watering, and domestic use. Nearly all ranchers and TRWU members have groundwater rights, and use their groundwater for domestic purposes and livestock and wildlife watering. TRWU's members use their Tongue River contract water almost exclusively for irrigation.

Unleashing CBM water into impoundments poses significant and possibly irreparable risks. CBM water is ***not*** suitable for irrigation. During a recent water rights hearing, testimony revealed that ***"managed irrigation" is expensive and cannot be done without a team of water managers and the application of expensive soil***

amendments. “Managed irrigation” that is currently occurring in Wyoming is wholly subsidized by a CBM producer on its own land. The “managed irrigation” that is contemplated for Montana can only be done on carefully selected soils and will be wholly subsidized by CBM producers. When “managed irrigation” ceases, extensive work to reclaim or “close” the site must be done.

TRWU’s members’ waters, lands, and livelihoods are threatened by the discharge of CBM water. So are their contracts with the State of Montana. In addition to their contract with the State to purchase 40,000 acre feet of water each year for irrigation, TRWU has a contract with the State of Montana to repay approximately \$5 million of the \$11.5 million loan that the State took out to pay for rehabilitation of the Tongue River Dam. TRWU’s members thus have significant financial obligations at stake. If the Tongue River water quality is diminished by CBM produced water and becomes unsuitable for irrigation, then neither TRWU nor the State will be able to meet their contractual obligations, and ranchers will be forced to leave their land.

A much better alternative to SB 407 would be a bill allowing landowners who want to use the water to put it in stock tanks.

On behalf of the Tongue River Water Users’ Association, I strongly urge a do not pass on SB 407.