

EFFECTS OF HB 138 ON MONTANA RIVERS IN A CLOSED BASIN
Deregulation of Water Resources in Closed Basins

HB 138 creates serious endangerment for rivers, for water rights holders, and for all existing users in closed river basins that use surface or groundwater. While the bill would gut the existing protections for all closed basins, this bill results from conflicts by one development in the Upper Missouri River Basin (closed since 1993).

How does HB 138 destroy the Basin Closure Law?

- 1) Grants DNRC the authority to issue permits without complete knowledge of the effect on river depletion
- 2) Requires no professional licensed investigators, designers, and operators for highly complex hydrologic systems
- 3) Requires little monitoring of water quantity or quality, including the augmentation water returned to the aquifer from treated wastewater
- 4) Creates opportunity for catastrophic public health consequences in underground aquifers and, eventually, in surface water
- 5) Potentially allows taking of water from senior water right holders
- 6) Puts responsibility only in the hands of the applicant to validate its plan.
- 7) Montana has no experience or knowledge base to judge the true merit of the applicant's plan;
- 8) The augmentation requirement to "reasonably replace" is not defined and will lead to abuse.
- 9) States that have successful operational augmentation projects do so by going through a phased approach with a feasibility study, pilot testing, and field measurements, before final operational design and implementation. This takes longer for the applicant to get a permit but assures that the plan has merit in meeting its requirements.
- 10) No responsibility has been assigned to, or bond required of, the applicant if a failure occurs and impacts the river and senior water rights holders.
- 11) The applicant should be held legally responsible through bonding of the project to protect the right others in case their plan fails for hydrologic reasons.
- 12) Rushing the passage of this draft bill for one developer creates unacceptable risk not only to the Upper Missouri River Basin, but to all other basins
- 13) A proven alternative augmentation system, called ASR (Aquifer Storage Recovery) is currently operating in other states and is permissible under existing Montana law. See: <http://www.asrforum.com/fatestudy/what.html>
- 14) DNRC and professors of hydrogeology at Montana State University and University of Montana are familiar with ASR and recognize its potential applicability in Montana's closed basins.
- 15) Using ASR, economic development can continue in a reasonable and responsible manner.

Recommendation: Kill the bill and, instead, require an interim study in the EQC to develop legislative protections, similar to those in other States.

EFFECTS OF HB 373 ON MONTANA RIVERS IN A CLOSED BASIN REQUIRE THAT IT BE OPPOSED

HB 373 is an even worst disaster than HB 138 for rivers and all existing senior water rights holders in a closed basin that use surface or groundwater. The bill guts the existing protections for all closed basins by eliminating the current definition of "immediately or directly connected" to surface water.

How does HB 373 destroy the Basin Closure Law?

- 1) Grants DNRC the authority to grant permits without complete knowledge and data of the effect on river depletion;
- 2) Puts responsibility only in the hands of the applicant to validate its plan;
- 3) Montana has no experience or knowledge base to judge the true merit of the applicant's plan;
- 4) This bill reverts back to definitions used in 1973 to grant a permit. The rivers flows since then have fallen significantly and some are highly over appropriated. That was the reason the 1993 bill was passed;
- 5) Destroys the TU Supreme Court Decision by eliminating pre-stream capture of groundwater in an aquifer near a river in a closed basin, thereby depleting stream flows over the area of influence of the wells;
- 6) Assumes all applicants have water available to augment, if needed by the rules of the bill, before and after adjudication of the over appropriated river in a closed basin;
- 7) The augmentation plan requested from the applicant is not based on a structured approach to validate its plan, but a trust me approach that everything will work and not fail during operational use. States that have successful operational augmentation projects do so by going through a phased approach with a feasibility study, pilot testing and field measurements before final operational design and implementation. This takes longer for the applicant to get a permit but insures that the plan has merit and will work in meeting the requirements.
- 8) No responsibility has been assigned to, or bond required, of the applicant if a failure occurs and impacts the river or senior water rights holders;
- 9) The applicant should be held legally responsible on the project to protect the rights of others in case their plan fails on for hydrologic reasons.

RECOMMENDATION: Kill the bill, and instead require an interim study in the EQC to develop legislative protections, similar to those in other states so that the rivers in closed basin are not harmed or further depleted.