EXHIBIT 6
DATE 3-23-07
HB 831

Mr. Chairman McNutt

I have studied bills HB 138, HB 373, and draft LC 1383 as they have merged into HB 831. I can see the vast effort that has gone into their preparation.

However, I must still urge you to vote no on HB 831 and will enumerate my reasons starting at the end of the bill:

Please turn to:

Page 42 Section 30: Severability

"If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid application." This sets different standard of review for applications and makes the enforcement on a case by case basis. This is unacceptable.

Page 41 Section 27 Appropriation

This bill is asking the taxpayers for a half million dollars for the Mt Bureau of Mines to conduct case studies to determine "minimum standards and criteria for hydrogeologic assessment."

If the Bureau of Mines is not sure what needs to be in an assessment, they certainly

may not be prepared to review them and determine their scientific adequacy as specified in section 16-4-b. DNRC needs these reports in a timely manner. Who does the Bureau of Mines answer to when these deadlines are not met? DNRC has a long history of reviewing appropriation applications and bears the responsibility of making the regulatory decision.

Funding this bill would add to the application & objection workload of DNRC which has not yet completed the adjudication of surface water rights. This half million dollars could help finish adjudication.

p. 41 Section 26 Recognition of existing appropriation Rights

"an appropriation right ... that was finally issued and that is not subject to any administrative or judicial action is recognized and confirmed. I understand the intent of this section. However as written, I am concerned that in a court of law it could also be construed to apply to a prior appropriator. If our surface right has not yet been adjudicated, it will not be recognized subject to adverse impact. It needs clarification so there is no room for wasted litigation.

Pages 40 to 41 Section 25 - Case Studies

If DNRC knows the requirements of a hydrogeolic assessment and methodology to determine mitigation impacts, these case studies are not needed. If DNRC does not, this entire bill is premature.

If research is needed it should be written as a separate bill, where the specific question is posed. Any research design should be based on a desired outcome, not on private parties that have pending applications with DNRC. Such use of taxpayers money may show prejudice, be in conflict of interest, and not yield desired results.

Page 38 - Section 24 Closed basin case study.

DNRC uses this type of data and must make decisions daily on water rights. Why is this task being assigned to another branch?

Pages 35 to 37 Sections 17 and 20
Aquifer recharge or mitigation plans and Aquifer Storage

If an adverse impact occurs to an existing water holder, the application can proceed if a mitigation plan shows that the net depletion is offset.

Section 2e and 3e state that applicant provide "evidence that an application for a change in appropriation right if necessary has been submitted."

It does <u>not</u> <u>require</u> <u>that it be approved</u>.

This change in appropriation may shift the burden of adverse impact to a different set of water users who now also have to defend their rights, file their objections, and incur huge financial costs. This section simply spells out what needs to be in a plan and that it needs to be <u>submitted</u>.

If the mitigation plan is accepted by DNRC the application may proceed through the review process 85-2 307 to 311. If there are objectors to 2(e) or 3(e), DNRC should determine the net depletion is <u>NOT</u> <u>OFFSET</u>

and the application denied until which time (2)(e) and 3 (e) are approved. There is an omission to this section. The Draft LC 1383 included Monitoring Requirements over 5 years to ensure that intact the mitigation plan was working. If the mitigation or acquifer recharge plan did not offset the adverse impacts to prior appropriators, the new appropriation right must be terminated. Prior surface water appropriators should be protected, this burden of proof should fall on the applicant.

Page 33 Section 16 Hydrogeologic Assessment

I am glad that the requirements of of the hydrogeolic assessment are spelled out. However I am concerned about section 4(b) where the Bureau of Mines is required to determine the scientific adequacy of the h. a. in 90 days and submit a written report to DNRC. If the B of M determines it is inadequate, is the application denied? It should be! If they do not meet the 90 day deadline, the data is determined adequate. Not Acceptable

Does this, or a B of M statement of adequacy make it not subject to further scruting or review by either DNRC or objectors? NOT clarified

Is the B of M ready to undertake this task tomorrow?? There are pending applications at DNRC.

Page 31 to 32 Section 15 Groundwater appropriation right in closed basin

I am so confused by the time frames in Sections 15 and 16 that I am not sure how to direct my comments. I am concerned about my right to file an objection. Remember page 2 of this act states: "it is critical that the legislature develop policies in a way that protects the prior appropriation doctrine."

The supreme court in its ruling on Cause 05-069 (Smith River Case) page 13 recognized the burden of the expense and time to defend their rights every time a new applicant seeks to appropriate water in a closed basin.

Current statute 85-2-307 (1) a states:
"Upon receipt of a correct and complete application for a permit, the department shall prepare a notice..." it continues to describe to whom.

I cannot tell in reading sections 15 to 17 when this occurs. What is considered complete and correct?

It should be after the applicant has submitted the complete application, hydrogeologic assessment, aquifer recharge plan, aquifer storage plan, &/or mitigation plan. It should be after DNRC has made the determination that the net depletion has been offset and after the BoM submits its 90 day review. I cannot make this determination from reading the bill

page 31-32 Section 15 (2) states that if the hydrogeologic assessment predicts there will not be a net depletion of surface water, the department shall proceed to 85-2-311.

This appears to exclude public notice and right to file an objection. This assumes the hydrogeologic assessment is correct.

In my experience as an objector, all four hydrology reports provided by the applicant were shown by the objectors to have errors and the application was denied, and denied a second time on appeal.

Had we not defended our rights at an incredible cost, that groundwater application would have been granted, not denied.

Section (2) also states that by a date set by the department (not less than 15 days or more than 60 days after the date of publication of notice) persons may file an objection.

The applicant has had unlimited time to prepare all assessments and mitigation plans. The B of M has had 90 days to look at just the hydrogelogic assessment. The objectors should be allowed the same time frame and be provided at least one copy of the application, the hydrogelogic assessment, the aquifer recharge plan, the mitigation plan, the DNRC report on offset of adverse impact, and the B of M report, in the community where the adverse impact occurs, not in some office miles away.

You can not make the objector

process so impossible, so costly, so timely, that we lose by default.

Conclusion:

Ample evidence exists of the inadequacies of this proposed legislation to support my request. I urge you to vote against its passage out of committee.

Thank you,

Susan Brown