

1 HOUSE BILL NO. 502

2 INTRODUCED BY M. PHILLIPS

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING CARBON SEQUESTRATION; REQUIRING A PERMIT
5 FOR A CARBON DIOXIDE SEQUESTRATION WELL; AUTHORIZING THE BOARD OF ENVIRONMENTAL
6 REVIEW TO ADOPT RULES FOR PERMIT REQUIREMENTS, FEES, PENALTIES, LIABILITY INSURANCE,
7 AND BONDING; REQUIRING NOTICE OF PERMIT APPLICATIONS FOR CARBON DIOXIDE
8 SEQUESTRATION WELLS; REQUIRING NOTICE OF LEASE APPLICATIONS FOR CARBON DIOXIDE
9 SEQUESTRATION WELLS; REQUIRING COORDINATION WITH THE BOARD OF OIL AND GAS
10 CONSERVATION FOR CERTAIN WELLS; DECLARING THAT THE STATE OF MONTANA OWNS THE
11 EXCLUSIVE RIGHT TO USE ALL PORE SPACE IN ALL STRATA UNDERLYING ALL SURFACES EXCEPT
12 THOSE OWNED BY THE UNITED STATES OR TRIBAL GOVERNMENTS; AFFIRMING THE DOMINANCE OF
13 THE MINERAL ESTATE; AUTHORIZING THE STATE BOARD OF LAND COMMISSIONERS TO LEASE PORE
14 SPACE; EXEMPTING A CARBON DIOXIDE SEQUESTRATION WELL FROM GROUND WATER PERMIT
15 REQUIREMENTS; AMENDING SECTIONS 70-16-101, 75-1-1001, 75-5-103, 75-5-401, AND 77-2-304, MCA;
16 AND PROVIDING EFFECTIVE DATES."

17
18 WHEREAS, geologic storage of carbon dioxide will benefit the citizens of the state and the state's
19 environment by reducing greenhouse gas emissions; and

20 WHEREAS, Montana has a range of geologic sites that could be used for carbon dioxide storage,
21 including depleted oil reservoirs and coal seams, without material interference with the ownership of minerals
22 within those geologic formations, and it is possible that geologic carbon sequestration in the state could become
23 a major part of the economy, producing jobs while preserving the environment;

24 WHEREAS, geologic pore space is a common natural resource held in trust by the state of Montana for
25 the environmental benefit of the general public, and the ownership, together with the rights of the public to utilize
26 that resource, must be clarified by legislative declaration;

27 WHEREAS, under the public trust doctrine, a public easement to utilize geologic pore space for the
28 benefit of the public currently exists and burdens all property within the state of Montana, with the exception of
29 that of the federal government and tribal governments; and

30 WHEREAS, the state of Montana has a corresponding duty to acknowledge and protect public property

1 rights that will guarantee community access to these resources.

2

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

4

5 NEW SECTION. **Section 1. Short title.** [Sections 1 through 9] may be cited as the "Geologic Carbon
6 Sequestration Act".

7

8 NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 9], the following definitions
9 apply:

10 (1) "Board" means the board of environmental review provided for in 2-15-3502.

11 (2) "Carbon dioxide" means anthropogenically sourced carbon dioxide of sufficient purity and quality.

12 (3) (a) "Carbon dioxide sequestration well" means a well that is used for injection of carbon dioxide into
13 a geologic formation for permanent storage.

14 (b) The term does not include a well regulated under Title 82, chapter 11, in which carbon dioxide is
15 injected for the purpose of enhancing the recovery of oil and gas.

16 (4) "Department" means the department of environmental quality provided for in 2-15-3501.

17 (5) "Geologic sequestration site" or "site" means the underground geologic formation, including but not
18 limited to deep saline formations, basalt or oil shale formations, depleted oil and gas reservoirs, and unminable
19 coal beds, where carbon dioxide is injected and stored.

20 (6) "Verification and monitoring" means measuring the amount of carbon dioxide stored at a specific
21 geologic sequestration site, checking the site for leaks or deterioration of storage integrity, and ensuring that
22 carbon dioxide is stored in a way that is permanent and not harmful to the ecosystem. The term includes:

23 (a) using models to show, before injection is allowed, that injected carbon dioxide will be securely stored.
24 Modeling includes but is not limited to consideration of seismic activity, possible paths for fugitive emissions, and
25 chemical reactions in the geologic formation.

26 (b) tracking plume behavior after injection of carbon dioxide, including the use of pressure monitoring;
27 and

28 (c) establishing a system of leak monitors.

29 (7) "Well" means a bored, drilled, or driven shaft with a depth that is greater than the largest surface
30 dimension.

1
2 **NEW SECTION. Section 3. Rules for administration and permitting.** (1) The board shall adopt rules
3 necessary for the administration and enforcement of [sections 1 through 9]. The rules must include but are not
4 limited to provisions that address:

5 (a) establishment of a geologic carbon dioxide sequestration program, including a permit system and
6 requirements and procedures for applications and for issuing carbon dioxide sequestration well permits by the
7 department;

8 (b) evaluation of possible geologic sequestration sites, including but not limited to geologic surveys,
9 existing data, test wells, and the feasibility of remediation;

10 (c) recordkeeping and reporting requirements sufficient to measure the effectiveness of carbon dioxide
11 sequestration wells and sites;

12 (d) standards for determining the suitability of carbon dioxide for injection, considering the quality and
13 purity of the carbon dioxide in order to not compromise the safety and efficiency of the geologic sequestration
14 site;

15 (e) procedures and requirements that a permit holder or another entity shall follow to ensure that the
16 drilling, casing, and plugging of carbon dioxide sequestration wells and other wells drilled into or through a carbon
17 sequestration site do not allow carbon dioxide to move out of one stratum into another, the intrusion of water into
18 the carbon dioxide strata, seepages, or the pollution of drinking water supplies;

19 (f) characterization of the injection zone and aquifers above and below the injection zone that may be
20 affected, including applicable pressure and fluid chemistry data to describe the projected effects of injection
21 activities;

22 (g) verification and monitoring at geologic sequestration sites;

23 (h) mitigation of leaks, including the ability to stop the leaking of carbon dioxide and to address impacts
24 of leaks;

25 (i) restoration of surface lands;

26 (j) minimum levels of liability insurance that must be carried by the permit holder while the well is under
27 construction, during the lifetime of the well's operation, and for 75 years following closure of the well;

28 (k) furnishing, updating, and release of a reasonable bond with good and sufficient surety, conditioned
29 for performance of the duty to comply with [sections 1 through 9] and rules adopted by the board. The bond
30 provided by the permit holder must be sufficient to guarantee the effectiveness of the carbon dioxide sequestration

1 well and site and to cover costs to offset carbon dioxide emissions because of any failure of a carbon dioxide
2 sequestration well or geologic sequestration site to contain carbon dioxide.

3 (l) fees that are commensurate with the cost of implementing and administering [sections 1 through 9].

4 (2) The rules must include, at a minimum, requirements pursuant to applicable federal regulatory
5 standards established by:

6 (a) the Energy Independence and Security Act of 2007, Public Law 110-140, and subsequent acts;

7 (b) the Safe Drinking Water Act, 42 U.S.C. 300f, et seq.; and

8 (c) the underground injection control program, 40 CFR, parts 144-147.

9 (3) The board shall periodically update rules to provide consistency between the rules promulgated under
10 this section and any regulations promulgated for the regulation of geologic carbon sequestration by the United
11 States environmental protection agency.

12

13 **NEW SECTION. Section 4. Carbon sequestration permit requirements -- appeal procedure.** (1)

14 A person may not construct or use a carbon sequestration well or convert a well to a carbon sequestration well
15 without a permit issued by the department pursuant to [sections 1 through 9].

16 (2) When the department approves or denies the application for a permit under this section, a person who
17 is jointly or severally adversely affected by the department's decision may request a hearing before the board.
18 The request for hearing must be filed within 15 days after the department renders its decision. An affidavit setting
19 forth the grounds for the request must be filed within 30 days after the department renders its decision. The
20 contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a
21 hearing before the board under this subsection.

22 (3) (a) The department's decision on the application is not final until 15 days have elapsed from the date
23 of the decision.

24 (b) The filing of a request for a hearing does not stay the department's decision. However, the board may
25 order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:

26 (i) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or

27 (ii) continuation of the permit during the appeal would produce great or irreparable injury to the person
28 requesting the stay.

29 (c) Upon granting a stay, the board may require a written undertaking to be given by the party requesting
30 the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board

1 determines that the permit was properly issued. When requiring an undertaking, the board shall use the same
2 procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on injunctions.

3
4 **NEW SECTION. Section 5. Requirements for other wells in geologic sequestration sites.** A person
5 may not drill a well that is not a carbon sequestration well into or through a geologic sequestration site or use or
6 plug a well drilled into a geologic sequestration site unless the well is drilled, maintained, and, upon
7 discontinuation of use, plugged in accordance with rules adopted pursuant to [section 3].

8
9 **NEW SECTION. Section 6. Enforcement -- notice -- order for corrective action -- administrative**
10 **penalty.** (1) When the department believes that a violation of [sections 1 through 9], a rule adopted under
11 [sections 1 through 9], or a condition or limitation imposed by a permit issued pursuant to [sections 1 through 9]
12 has occurred, it may cause written notice to be served personally or by certified mail on the alleged violator or
13 the violator's agent. The notice must specify the provision of [sections 1 through 9], the rule, or the permit
14 condition or limitation alleged to be violated and the facts alleged to constitute a violation. The notice may include
15 an order to take necessary corrective action within a reasonable period of time stated in the order or an order to
16 pay an administrative penalty, or both. The order becomes final unless, within 30 days after the notice is received,
17 the person named requests in writing a hearing before the board. On receipt of the request, the board shall
18 schedule a hearing.

19 (2) If, after a hearing held under subsection (1), the board finds that a violation has occurred, it shall
20 issue an appropriate order for the taking of corrective action or assess an administrative penalty, or both. As
21 appropriate, an order issued as part of a notice or after a hearing may prescribe the date by which the violation
22 must cease, time limits for particular action in correcting the violation, or the date by which the administrative
23 penalty must be paid. If, after a hearing on an order contained in a notice, the board finds that a violation has not
24 occurred, it shall rescind the order.

25 (3) (a) An action initiated under this section may include an administrative penalty of not less than \$75
26 or more than \$10,000 for each day of each violation. If an order issued by the department or board under this
27 section requires the payment of an administrative penalty, the department or board shall state findings and
28 conclusions describing the basis for its penalty assessment.

29 (b) Penalties imposed by an administrative order under this section may not be assessed for any day
30 of violation that occurred more than 2 years prior to the issuance of the initial notice and order by the department

1 under subsection (1).

2 (c) In determining the amount of penalty to be assessed for an alleged violation under this section, the
3 department or board, as appropriate, shall consider the penalty factors in 75-1-1001.

4 (d) The department may bring a judicial action to enforce a final administrative order issued pursuant
5 to this section. The action must be filed in the district court of the county in which the violation occurred or, if
6 mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark
7 County.

8 (4) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part
9 6, apply to a hearing conducted under this section.

10 (5) This section does not prevent the board or department from making efforts to obtain voluntary
11 compliance through warning, conference, or any other appropriate means.

12

13 **NEW SECTION. Section 7. Fees and penalties.** Any fees or penalties collected pursuant to [section
14 6] or rules adopted under [section 3] must be deposited in an account in the state special revenue fund provided
15 for in 17-2-102 for use by the department of environmental quality to administer [sections 1 through 9].

16

17 **NEW SECTION. Section 8. Coordination with board of oil and gas conservation.** (1) A well
18 regulated under Title 82, chapter 11, in which carbon dioxide is injected for the purpose of enhancing the recovery
19 of oil and gas may be converted to a carbon dioxide sequestration well under a permit issued pursuant to
20 [sections 1 through 9].

21 (2) The board shall coordinate the development of rules with the board of oil and gas conservation with
22 regard to the conversion of wells referred to in subsection (1) to carbon dioxide sequestration wells.

23 (3) Wells converted to carbon dioxide sequestration wells pursuant to this section are subject to rules
24 adopted under [section 3].

25

26 **NEW SECTION. Section 9. Notice of application for permit.** The department shall provide notice of
27 an application for a permit pursuant to [section 4]. The notice must be:

28 (1) published in a newspaper of general circulation in each county where the geologic sequestration site
29 is located; and

30 (2) mailed to all surface owners, mineral claimants, mineral owners, lessees, and other owners of record

1 of subsurface interests that are located within 1 mile of the proposed boundary of the geologic sequestration site.

2

3 **NEW SECTION. Section 10. Mineral activities and ownership at geologic sequestration sites --**

4 **definition.**(1) [Sections 10 through 13] may not be considered to affect the lawful right of a surface or mineral
5 owner to drill or bore through a geologic sequestration site if done in accordance with the rules established
6 pursuant to [sections 1 through 9].

7 (2) (a) For the purposes of [sections 10 through 13], "pore space" means subsurface space of any size,
8 whether vacant or filled, that can be used as storage space for carbon dioxide, compressed air, or other
9 substances injected into the space for storage.

10 (b) It does not include any pore space that on [the effective date of this section] has been utilized as a
11 natural gas storage reservoir or which is known to contain natural gas or other gaseous or liquid materials in
12 amounts sufficient to be economically retrievable in relation to the cost of exploring for, producing, and
13 transporting that natural gas or gaseous or liquid mineral to the nearest point of sale.

14

15 **NEW SECTION. Section 11. State ownership of pore space.** (1) Under the public trust doctrine, the
16 state of Montana owns the exclusive right to use all pore space in all strata below the surface of this state, with
17 the exception of lands owned by or under the jurisdiction of the United States or any federally recognized tribal
18 government, and the state of Montana holds that easement in trust for the environmental benefit of the general
19 public.

20 (2) A conveyance of the surface ownership of real property by the state of Montana does not result in
21 a conveyance of the pore space in any strata below the surface of that real property.

22 (3) [Sections 10 through 13] do not prohibit a mineral owner or an owner's agent or lessee from exploring
23 for, developing, or producing naturally occurring carbon dioxide on that mineral owner's property.

24

25 **NEW SECTION. Section 12. Dominance of mineral estate.** (1) [Sections 10 through 13] may not be
26 construed to change or alter common law in accordance with 1-1-108 as it relates to the rights belonging to or
27 the dominance of the mineral estate, including but not limited to the right to mine, drill, or recomplete a well, to
28 inject substances to facilitate production, or to implement enhanced recovery, as defined in 82-11-101, for the
29 purposes of recovery of oil, gas, or other minerals.

30 (2) If an underground reservoir is depleted of oil or gas or abandoned, it may be considered pore space

1 in accordance with the provisions of [sections 10 through 13].

2 (3) The state of Montana and its lessee under [section 13] may negotiate with private land owners for
3 leases authorizing the use of the surface of private lands and allowing access to state-owned pore space. The
4 leases are subject to any conditions contained in a permit issued by the department of environmental quality
5 pursuant to [sections 1 through 9].

6
7 **NEW SECTION. Section 13. Leasing of pore space rights -- board rulemaking.** (1) The board of
8 land commissioners may lease the state's pore space rights after [the effective date of this section] or provide
9 an easement pursuant to [section 10(1)] provided that it gives notice of the lease to the department of
10 environmental quality. The leases must contain:

11 (a) a detailed description of the subsurface stratum or strata involved in the transfer;
12 (b) a legal description of the boundaries of the surface lying over the transferred pore space; and
13 (c) a list of the existing lessees, rights, or interests on the property, including mineral interests and any
14 other rights attached to the surface lying over the transferred pore space.

15 (2) The board shall give notice of an application for a lease of state pore space to the department of
16 environmental quality, affected surface owners, mineral claimants, mineral owners, mineral lessees, and other
17 owners of record of subsurface interests at a geologic sequestration site.

18 (3) Pursuant to board rules, the board may issue licenses for any secondary use, including the use of
19 pore space rights, of state land other than its primary classification when the use is compatible with the board's
20 multiple use objective.

21 (4) (a) At the time of injection, carbon dioxide injected pursuant to this section is and remains the
22 property of the state of Montana, unless and until transferred to and accepted by another person.

23 (b) The leasing of pore space pursuant to subsection (1) does not constitute transfer or acceptance of
24 the carbon dioxide.

25
26 **Section 14.** Section 70-16-101, MCA, is amended to read:

27 **"70-16-101. Rights of owner in fee -- above and below surface.** ~~The~~ Except as provided in [sections
28 10 through 13], the owner of land in fee has the right to the surface and to everything permanently situated
29 beneath or above it."
30

1 **Section 15.** Section 75-1-1001, MCA, is amended to read:

2 **"75-1-1001. Penalty factors.** (1) In determining the amount of an administrative or civil penalty to which
3 subsection (4) applies, the department of environmental quality or the district court, as appropriate, shall take into
4 account the following factors:

5 (a) the nature, extent, and gravity of the violation;

6 (b) the circumstances of the violation;

7 (c) the violator's prior history of any violation, which:

8 (i) must be a violation of a requirement under the authority of the same chapter and part as the violation
9 for which the penalty is being assessed;

10 (ii) must be documented in an administrative order or a judicial order or judgment issued within 3 years
11 prior to the date of the occurrence of the violation for which the penalty is being assessed; and

12 (iii) may not, at the time that the penalty is being assessed, be undergoing or subject to administrative
13 appeal or judicial review;

14 (d) the economic benefit or savings resulting from the violator's action;

15 (e) the violator's good faith and cooperation;

16 (f) the amounts voluntarily expended by the violator, beyond what is required by law or order, to address
17 or mitigate the violation or impacts of the violation; and

18 (g) other matters that justice may require.

19 (2) After the amount of a penalty is determined under subsection (1), the department of environmental
20 quality or the district court, as appropriate, may consider the violator's financial ability to pay the penalty and may
21 institute a payment schedule or suspend all or a portion of the penalty.

22 (3) The department of environmental quality may accept a supplemental environmental project as
23 mitigation for a portion of the penalty. For purposes of this section, a "supplemental environmental project" is an
24 environmentally beneficial project that a violator agrees to undertake in settlement of an enforcement action but
25 which the violator is not otherwise legally required to perform.

26 (4) This section applies to penalties assessed by the department of environmental quality or the district
27 court under Title 75, chapters 2, 5, 6, 11, and 20; Title 75, chapter 10, parts 2, 4, 5, and 12; sections 1 through
28 9; and Title 76, chapter 4.

29 (5) The board of environmental review and the department of environmental quality may, for the statutes
30 listed in subsection (4) for which each has rulemaking authority, adopt rules to implement this section."

- 1
- 2 **Section 16.** Section 75-5-103, MCA, is amended to read:
- 3 **"75-5-103. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions
- 4 apply:
- 5 (1) "Board" means the board of environmental review provided for in 2-15-3502.
- 6 (2) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or
- 7 other wastes, creating a hazard to human health.
- 8 (3) "Council" means the water pollution control advisory council provided for in 2-15-2107.
- 9 (4) (a) "Currently available data" means data that is readily available to the department at the time a
- 10 decision is made, including information supporting its previous lists of water bodies that are threatened or
- 11 impaired.
- 12 (b) The term does not mean new data to be obtained as a result of department efforts.
- 13 (5) "Degradation" means a change in water quality that lowers the quality of high-quality waters for a
- 14 parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant
- 15 to 75-5-301(5)(c).
- 16 (6) "Department" means the department of environmental quality provided for in 2-15-3501.
- 17 (7) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes
- 18 sewage systems and treatment works.
- 19 (8) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of
- 20 chemical, physical, biological, and other constituents that are discharged into state waters.
- 21 (9) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether
- 22 or not those uses are included in the water quality standards.
- 23 (10) "High-quality waters" means all state waters, except:
- 24 (a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by
- 25 the board's classification rules; and
- 26 (b) surface waters that:
- 27 (i) are not capable of supporting any one of the designated uses for their classification; or
- 28 (ii) have zero flow or surface expression for more than 270 days during most years.
- 29 (11) "Impaired water body" means a water body or stream segment for which sufficient credible data
- 30 shows that the water body or stream segment is failing to achieve compliance with applicable water quality

1 standards.

2 (12) "Industrial waste" means a waste substance from the process of business or industry or from the
3 development of any natural resource, together with any sewage that may be present.

4 (13) "Interested person" means a person who has a real property interest, a water right, or an economic
5 interest that is or may be directly and adversely affected by the department's preliminary decision regarding
6 degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested authorization
7 to degrade high-quality waters.

8 (14) "Load allocation" means the portion of a receiving water's loading capacity that is allocated to one
9 of its existing or future nonpoint sources or to natural background sources.

10 (15) "Loading capacity" means the mass of a pollutant that a water body can assimilate without a violation
11 of water quality standards. For pollutants that cannot be measured in terms of mass, it means the maximum
12 change that can occur from the best practicable condition in a surface water without causing a violation of the
13 surface water quality standards.

14 (16) "Local department of health" means the staff, including health officers, employed by a county, city,
15 city-county, or district board of health.

16 (17) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium, barium,
17 cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver, thallium, and zinc.

18 (18) "Mixing zone" means an area established in a permit or final decision on nondegradation issued by
19 the department where water quality standards may be exceeded, subject to conditions that are imposed by the
20 department and that are consistent with the rules adopted by the board.

21 (19) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime,
22 sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded
23 equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

24 (20) "Outstanding resource waters" means:

25 (a) state surface waters located wholly within the boundaries of areas designated as national parks or
26 national wilderness areas as of October 1, 1995; or

27 (b) other surface waters or ground waters classified by the board under the provisions of 75-5-316 and
28 approved by the legislature.

29 (21) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point
30 source.

1 (22) "Parameter" means a physical, biological, or chemical property of state water when a value of that
2 property affects the quality of the state water.

3 (23) "Person" means the state, a political subdivision of the state, institution, firm, corporation,
4 partnership, individual, or other entity and includes persons resident in Canada.

5 (24) "Point source" means a discernible, confined, and discrete conveyance, including but not limited to
6 any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating
7 craft, from which pollutants are or may be discharged.

8 (25) (a) "Pollution" means:

9 (i) contamination or other alteration of the physical, chemical, or biological properties of state waters that
10 exceeds that permitted by Montana water quality standards, including but not limited to standards relating to
11 change in temperature, taste, color, turbidity, or odor; or

12 (ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other
13 substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or
14 injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife.

15 (b) A discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge
16 permit rules of the board is not pollution under this chapter. Activities conducted under the conditions imposed
17 by the department in short-term authorizations pursuant to 75-5-308 are not considered pollution under this
18 chapter.

19 (c) Contamination of ground water within a geologic sequestration site, as defined in [section 2], by a
20 carbon dioxide sequestration well in accordance with a permit issued under [sections 1 through 9] is not pollution
21 and does not require a mixing zone.

22 (26) "Sewage" means water-carried waste products from residences, public buildings, institutions, or
23 other buildings, including discharge from human beings or animals, together with ground water infiltration and
24 surface water present.

25 (27) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other
26 wastes to an ultimate disposal point.

27 (28) "Standard of performance" means a standard adopted by the board for the control of the discharge
28 of pollutants that reflects the greatest degree of effluent reduction achievable through application of the best
29 available demonstrated control technology, processes, operating methods, or other alternatives, including, when
30 practicable, a standard permitting no discharge of pollutants.

1 (29) (a) "State waters" means a body of water, irrigation system, or drainage system, either surface or
2 underground.

3 (b) The term does not apply to:

4 (i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

5 (ii) irrigation waters or land application disposal waters when the waters are used up within the irrigation
6 or land application disposal system and the waters are not returned to state waters.

7 (30) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in
8 combination with narrative information, that supports a finding as to whether a water body is achieving compliance
9 with applicable water quality standards.

10 (31) "Threatened water body" means a water body or stream segment for which sufficient credible data
11 and calculated increases in loads show that the water body or stream segment is fully supporting its designated
12 uses but threatened for a particular designated use because of:

13 (a) proposed sources that are not subject to pollution prevention or control actions required by a
14 discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or

15 (b) documented adverse pollution trends.

16 (32) "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations for
17 point sources and load allocations for both nonpoint sources and natural background sources established at a
18 level necessary to achieve compliance with applicable surface water quality standards.

19 (33) "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage,
20 industrial wastes, or other wastes.

21 (34) "Waste load allocation" means the portion of a receiving water's loading capacity that is allocated
22 to one of its existing or future point sources.

23 (35) "Water quality protection practices" means those activities, prohibitions, maintenance procedures,
24 or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve
25 the quality of state waters. Water quality protection practices include but are not limited to treatment requirements,
26 standards of performance, effluent standards, and operating procedures and practices to control site runoff,
27 spillage or leaks, sludge or water disposal, or drainage from material storage.

28 (36) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or
29 otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

30 (37) "Watershed advisory group" means a group of individuals who wish to participate in an advisory

1 capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the development
2 of TMDLs under 75-5-703, including those groups or individuals requested by the department to participate in
3 an advisory capacity as provided in 75-5-704."
4

5 **Section 17.** Section 75-5-401, MCA, is amended to read:

6 **"75-5-401. Board rules for permits -- ground water exclusions.** (1) Except as provided in subsection
7 (5), the board shall adopt rules:

8 (a) governing application for permits to discharge sewage, industrial wastes, or other wastes into state
9 waters, including rules requiring the filing of plans and specifications relating to the construction, modification,
10 or operation of disposal systems;

11 (b) governing the issuance, denial, modification, or revocation of permits. The board may not require a
12 permit for a water conveyance structure or for a natural spring if the water discharged to state waters does not
13 contain industrial waste, sewage, or other wastes. Discharge to surface water of ground water that is not altered
14 from its ambient quality does not constitute a discharge requiring a permit under this part if:

15 (i) the discharge does not contain industrial waste, sewage, or other wastes;

16 (ii) the water discharged does not cause the receiving waters to exceed applicable standards for any
17 parameters; and

18 (iii) to the extent that the receiving waters in their ambient state exceed standards for any parameters,
19 the discharge does not increase the concentration of the parameters.

20 (c) governing authorization to discharge under a general permit for storm water associated with
21 construction activity. These rules must allow an owner or operator to notify the department of the intent to be
22 covered under the general permit. This notice of intent must include a signed pollution prevention plan that
23 requires the applicant to implement best management practices in accordance with the general permit. The rules
24 must authorize the owner or operator to discharge under the general permit on receipt of the notice and plan by
25 the department.

26 (2) The rules must allow the issuance or continuance of a permit only if the department finds that
27 operation consistent with the limitations of the permit will not result in pollution of any state waters, except that
28 the rules may allow the issuance of a temporary permit under which pollution may result if the department
29 ensures that the permit contains a compliance schedule designed to meet all applicable effluent standards and
30 water quality standards in the shortest reasonable period of time.

1 (3) The rules must provide that the department may revoke a permit if the department finds that the
2 holder of the permit has violated its terms, unless the department also finds that the violation was accidental and
3 unforeseeable and that the holder of the permit corrected the condition resulting in the violation as soon as was
4 reasonably possible.

5 (4) The board may adopt rules governing reclamation of sites disturbed by construction, modification,
6 or operation of permitted activities for which a bond is voluntarily filed by a permittee pursuant to 75-5-405,
7 including rules for the establishment of criteria and procedures governing release of the bond or other surety and
8 release of portions of a bond or other surety.

9 (5) Discharges of sewage, industrial wastes, or other wastes into state ground waters from the following
10 activities or operations are not subject to the ground water permit requirements adopted under subsections (1)
11 through (4):

12 (a) discharges or activities at wells injecting fluids associated with oil and gas exploration and production
13 regulated under the federal underground injection control program;

14 (b) disposal by solid waste management systems licensed pursuant to 75-10-221;

15 (c) individuals disposing of their own normal household wastes on their own property;

16 (d) hazardous waste management facilities permitted pursuant to 75-10-406;

17 (e) water injection wells, reserve pits, and produced water pits used in oil and gas field operations and
18 approved pursuant to Title 82, chapter 11;

19 (f) agricultural irrigation facilities;

20 (g) storm water disposal or storm water detention facilities;

21 (h) subsurface disposal systems for sanitary wastes serving individual residences;

22 (i) in situ mining of uranium facilities controlled under Title 82, chapter 4, part 2;

23 (j) mining operations subject to operating permits or exploration licenses in compliance with The Strip
24 and Underground Mine Reclamation Act, Title 82, chapter 4, part 2, or the metal mine reclamation laws, Title 82,
25 chapter 4, part 3; or

26 (k) projects reviewed under the provisions of the Montana Major Facility Siting Act, Title 75, chapter 20;

27 or

28 (l) a carbon dioxide sequestration well for which a permit has been issued pursuant to [sections 1
29 through 9].

30 (6) Notwithstanding the provisions of 75-5-301(4), mixing zones for activities excluded from permit

1 requirements under subsection (5) of this section must be established by the permitting agency for those activities
2 in accordance with 75-5-301(4)(a) through (4)(c).

3 (7) Notwithstanding the exclusions set forth in subsection (5), any excluded source that the department
4 determines may be causing or is likely to cause violations of ground water quality standards may be required to
5 submit monitoring information pursuant to 75-5-602.

6 (8) The board may adopt rules identifying other activities or operations from which a discharge of
7 sewage, industrial wastes, or other wastes into state ground waters is not subject to the ground water permit
8 requirements adopted under subsections (1) through (4).

9 (9) The board may adopt rules authorizing general permits for categories of point source discharges.
10 The rules may authorize discharge upon issuance of an individual authorization by the department or upon receipt
11 of a notice of intent to be covered under the general permit."

12

13 **Section 18.** Section 77-2-304, MCA, is amended to read:

14 **"77-2-304. Mineral reservations in state land.** All pore space pursuant to [section 11], coal, oil, oil
15 shale, gas, phosphate, sodium, and other mineral deposits in state land, except sand, gravel, building stone, and
16 brick clay, which were not reserved by the United States before July 1, 1927, are reserved to the state. Subject
17 to 17-6-340, those deposits are reserved from sale except upon a rental and royalty basis as provided by law.
18 A purchaser of state land acquires no right, title, or interest in or to any of those deposits or pore space. The state
19 also reserves for itself and its lessees the right to enter upon state land to prospect for, develop, mine, and
20 remove mineral deposits or to use pore space and to occupy and use so much of the surface of the land as may
21 be required for all purposes reasonably extending to the exploring for, mining, and removal of the deposits from
22 the land or the use of the pore space, but the lessee shall make just payment to the purchaser for all damage
23 done by reason of entry upon the land and the use and occupancy of the surface of the land."

24

25 NEW SECTION. **Section 19. Notification to tribal governments.** The secretary of state shall send
26 a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell
27 Chippewa tribe.

28

29 NEW SECTION. **Section 20. Codification instruction.** (1) [Sections 1 through 9] are intended to be
30 codified as an integral part of Title 75, and the provisions of Title 75 apply to [sections 1 through 9].

1 (2) [Sections 10 through 12] are intended to be codified as an integral part of Title 70, and the provisions
2 of Title 70 apply to [sections 10 through 12].

3 (3) [Section 13] is intended to be codified as an integral part of Title 77, and the provisions of Title 77
4 apply to [section 13].

5
6 **NEW SECTION. Section 21. Saving clause.** [This act] does not affect rights and duties that matured,
7 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

8
9 **NEW SECTION. Section 22. Severability.** If a part of [this act] is invalid, all valid parts that are
10 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
11 the part remains in effect in all valid applications that are severable from the invalid applications.

12
13 **NEW SECTION. Section 23. Transition -- contingent implementation.** If the United States
14 environmental protection agency adopts regulations allowing states to apply for primacy over carbon dioxide
15 sequestration wells under the federal underground injection control program adopted by the environmental
16 protection agency, the department of environmental quality shall in consultation with the board of oil and gas
17 conservation and the department of natural resources and conservation develop draft rules to implement [sections
18 1 through 9] for submission to the board of environmental review and, upon adoption, seek primacy.

19
20 **NEW SECTION. Section 24. Effective dates -- contingency.** (1) [Sections 1 through 9] and [sections
21 15 through 17] are effective on the date that the department of environmental quality is granted primacy to
22 administer activities at carbon dioxide sequestration wells by the United States environmental protection agency.

23 (2) [Sections 10 through 14 and 18 through 22 and this section] are effective on passage and approval.

24 (3) The department of environmental quality shall provide a copy of the grant of primacy provided for in
25 subsection (1) to the code commissioner.

26 - END -