

**Testimony of Montana Association of Realtors® (MAR)  
House Natural Resources Committee  
61<sup>st</sup> Session of the Montana Legislature  
PROPONENT OF Senate Bill No. 120**

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CONTROLLED GROUND WATER LAWS; GRANTING RULEMAKING AUTHORITY; ALLOWING PETITIONS FROM LOCAL ENTITIES; PRIORITIZING FUNDING AND STUDIES; REVISING CRITERIA FOR DESIGNATING OR MODIFYING A CONTROLLED GROUND WATER AREA; EXPANDING CONTROL PROVISIONS; REMOVING PREFERENCES FOR DOMESTIC AND LIVESTOCK WITHDRAWALS; ELIMINATING GROUND WATER SUPERVISORS; REMOVING PENALTIES ASSOCIATED WITH NONCOMPLIANCE WITH GROUND WATER STATUTES; AMENDING SECTIONS 85-2-306, 85-2-402, 85-2-501, 85-2-506, AND 85-2-508, MCA; REPEALING SECTIONS 85-2-507, 85-2-509, 85-2-511, 85-2-513, 85-2-518, AND 85-2-520, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

Dear Chairman Milburn and members of the Committee:

For the record, my name is Abigail St. Lawrence, and I represent the Montana Association of Realtors® ("MAR"). MAR represents over 4,600 real estate brokers, property managers, salespersons, and affiliates throughout Montana and is the business advocate for Montana real estate professionals, representing practitioners active in all phases of real estate brokerage, management, development, and appraisal. MAR supports SB 120 because it is a step in the right direction of improving current problematic controlled groundwater area ("CGWA") statutes.

As just about anyone who has been involved in a CGWA petition under current statute will tell you, the process is broken. As few as 20 or one-quarter of water users within a proposed CGWA, whichever number is less, can initiate the petition process by presenting the Montana Department of Natural Resources and Conservation ("DNRC") with a petition for a CGWA containing nothing more than unsubstantiated fears of water shortages, despite the fact that Mont. Code Ann. § 85-2-311 (1)(b) requires any applicant for a new permit for beneficial water use (*i.e.*, any new water right permit) to demonstrate that existing water rights will not be adversely affected. *See*, Mont. Code Ann § 85-2-506(2). All too often, CGWA petitions are used as a backdoor mechanism to stop or severely limit responsible development when a few very vocal opponents have failed in all other avenues. Because the petition requirements in present law are so minimal and the process so ill-defined, even if the petitioners are not ultimately successful in getting a permanent CGWA designated, they can still quite successfully grind all development to a halt for a very long time and require homeowners trying to get their water to expend significant time, energy, and money to combat a baseless petition.

Even beyond the waste of private resources, current law also sets up a situation where DNRC often ends up expending significant time and personnel and financial resources on undertaking studies to determine if a permanent CGWA is necessary. First, because the procedure for conducting a hearing on a CGWA petition is ill-defined under current law,

DNRC is required to “reinvent the wheel” for each new petition, coming up with *ad hoc* procedure that rarely is satisfactory to all parties involved. Further, because the hearing often resembles more of a free-for-all than anything else, with no party knowing who else may show up until the hearing is actually underway, the hearings can be unproductive, costly in terms of both time and money, and cumbersome for all parties, both private folks and DNRC.

Under Mont. Code Ann. § 85-2-507(5)(a), if after hearing the petition for a CGWA, DNRC “finds that sufficient facts are not available to designate or modify a permanent controlled ground water area, the department may designate the area in question to be a temporary controlled ground water area.” The purpose of a temporary CGWA is to allow DNRC the time to conduct a study of the area and obtain facts necessary to determine if a permanent CGWA is warranted. *See*, Mont. Code Ann. § 85-2-507(5)(b). However, study is not the only characteristic of a temporary CGWA. Rather, the order designating a temporary CGWA can and often does include corrective control provisions and limitations on withdrawals during the existence of a temporary CGWA. *See*, Mont. Code Ann. § 85-2-507(5)(a). In other words, even though DNRC does not have facts before it to support designation of a permanent CGWA, it can impose almost all the restrictions and requirements of a permanent CGWA while it goes about gathering information to determine if a CGWA is warranted, resulting in significant restrictions and, in some cases, all out prohibition, on water use without any basis in fact.

SB 120 is a significant step towards improving the CGWA process for all involved. First and foremost, SB 120 improves the quality of CGWA petitions to DNRC by setting standards for a correct and complete petition, which must include analysis prepared by a hydrologist or other qualified professional and must describe proposed mitigation measures to address the allegations of reductions in recharge, excessive withdrawals, or adverse impacts to groundwater quality. *See*, Sec. 5(3)(a). This is an important step forward in two respects. First and foremost, setting a minimum bar that petitions must reach will help to resolve the “shoot first” mentality promoted under current law, which allows petitioners to initiate the CGWA process without attempting or even proposing any mitigation efforts to address their concerns. Second, by setting a bar for petitions to be supported by scientific evidence rather than factually-thin allegation, SB 120 will save both DNRC and private concerned parties untold amounts of time and money currently expending in dealing with petitions that are based on little more than emotion and conjecture rather than hydrologic fact.

While SB 120 raises the bar on what a petition must contain, it does not leave petitioning parties to fend for themselves in gathering the scientific data required for a petition. Instead, SB 120 limits those entities that can submit a petition for a CGWA to DNRC to state or local public health agencies to address identified public health risks or municipalities, counties, conservation districts, or local water quality districts. *See*, Sec. 5(2)(b), (c)(i). These local government entities can work with concerned citizens to develop a petition that can be accepted by DNRC, utilizing resources that individual citizens do not have at their disposal (such as certain grants that local governments are eligible for to gather the information necessary to put together a petition) while also giving local governments a way to respond to citizen concerns regarding water use and quality. However, SB 120 also protects local governments from having to respond to

frivolous applications for petitions by granting local governments the authority to establish criteria for acceptance of an application to petition DNRC. *See*, Sec. 7.

Under SB 120, the public does still have a direct petition right to submit a petition signed by at least one-third of water right holders within the proposed controlled groundwater area. *See*, Sec. 5(2)(c)(ii). By requiring the petition to be submitted by water right holders rather than just water “users,” SB 120 ensures that those who are truly impacted by changes in groundwater (*i.e.*, those who use groundwater for appropriating water) are the persons petitioning the DNRC. Additionally, by setting the minimum number of petitioners at one-third rather than the current minimum of 20 or one-quarter of users, whichever is less (*see*, Mont. Code Ann. § 85-2-506(2)), SB 120 makes certain that a minority cannot impose the significant time and cost burdens of a controlled groundwater area petition on their neighbors and DNRC.

SB 120 also resolves the significant problem under current law of temporary CGWAs, which currently result in a “cloud” on land within the temporary CGWA by imposing restrictions similar to those under a permanent CGWA, but without facts sufficient to support designation of a permanent CGWA. SB 120 allows a temporary CGWA to be designated for the purposes of study only and specifically prohibits the control provisions of a permanent CGWA, except for measurement and reporting, from being required within a temporary CGWA. *See*, Sec. 5(6)(b). Further, SB 120 allows studies in temporary CGWAs to be considered for funding under the renewable resource and grant loan program (*see*, Sec. 5(6)(e)) and for investigation under the ground water investigation program in the Montana Bureau of Mines and Geology if authorized<sup>1</sup> (*see*, Sect. 5(6)(f)), thereby promoting timely completion of the study and, ultimately, more timely resolution of petitions.

The bottom line is that SB 120 improves a process that, at present, is severely dysfunctional. Please recommend a “do pass” on Senate Bill No. 120. Thank you, and I will be available for any questions.

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<sup>1</sup> HB 52 proposed a ground water investigation program under the auspices of the Montana Bureau of Mines and Geology. HB 52 is currently pending before House Appropriations.