SENATE LOCAL GOVERNMENT
EXHIBIT NO. 2
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BILL NO. SB17

Montana
Association of REALTORS®
Political Affairs

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**Testimony of Montana Association of REALTORS® (MAR)**
**Glenn Oppel, Government Affairs Director**
**Senate Natural Resources Committee**
**Jan. 21, 2009, 3:00 p.m.**

**Senate Bill 17 – Require public water and sewer systems for certain subdivisions**
**Sponsor: Sen. Gary Perry (R)**

**General Overview:** Senate Bill 17 amends the Montana Subdivision and Platting Act to require subdivisions that exceed 30 lots with average lot sizes less than three acres to use public water and sewer systems. If a subdivider exceeding the threshold wants to utilize exempt wells and/or individual septic systems, they must prove by a preponderance of the evidence that the alternative approach protects public health and the environment and must provide a cost comparison between the proposed approach and a public water and sewer system. A separate hearing would be required for the alternative approach.

**MAR Position:** Oppose

- SB 17 establishes a statewide standard in a diverse state of 56 counties and, therefore, compromises local control over subdivision regulation. Local governments already have the authority under subdivision and zoning regulations to require public water and sewer systems.
- SB 17 incorrectly assumes that every subdivision on exempt wells and individual septic systems that exceeds the threshold is a threat to public health and the environment.
- SB 17 assumes that the standard it creates will fit into the market conditions of every locality in the state of Montana.
- SB 17 limits the use of exempt wells for smaller subdivisions when the permit process to obtain a water right for public water systems is at a standstill in the higher-growth areas of the state.
- SB 17 will increase the cost of building homes for Montana's workforce by restricting options and increasing regulatory requirements to obtain groundwater.

**Analysis**

As MAR has commented to the Water Policy Interim Committee ("WPIC") and previous legislatures, science should serve as the impetus for regulation. Rather than being based on science, Senate Bill 17 is based on a random "break-even" point for an individual developer. One cannot assume that every subdivision utilizing public water and sewer systems could "break even" at 30 or more lots with an average lot size less than three acres. To apply such a standard to all subdivisions across Montana is unwarranted and unsupported.

Data that MAR has presented to the WPIC and previous legislatures has consistently demonstrated that exempt wells – the obvious target of SB 17 – constitute a very small fraction of groundwater consumption in Montana, particularly when compared with agricultural irrigation. MAR studies have shown that subdivision development has not significantly affected surface

water flows or the ability of surface water users to appropriate water over the last 50 years and actually may reduce net consumption as agricultural uses are converted to domestic use by subdivision growth. Therefore, even in Montana's closed basins, a large surplus of groundwater resources is available to provide adequate supply for existing and new uses. Moreover, studies presented to WPIC demonstrated that individual septic systems are a very effective mechanism to protect groundwater quality.

If there is a public health problem, local governments already have the authority under Montana's subdivision code, Mont. Code Ann. § 76-3-511, to enact local regulations that are more stringent than state standards as long as the regulations are backed by scientific evidence. In effect, SB 17 eliminates local control over adoption of public system requirements, provided that scientific evidence supports such a requirement. Moreover, local governments could use zoning authority to require public water and sewer systems.

SB 17 shifts the requirements in Mont. Code Ann. § 76-3-511 to the subdivider. A subdivider could propose an alternative to a public system for acceptance by the local governing body as part of preliminary plat approval under Mont. Code Ann. § 76-3-622, but such a proposal would have to include information showing by a preponderance of the evidence that the proposed alternative protects public health and the environment, can mitigate harm to public health and the environment, and is achievable under current technology. Such information would have to be supported by peer-reviewed scientific studies. Additionally, the proposal would have to include a comparison of costs between a public system and the proposed alternative. The governing body is required to hold a hearing to specifically address the subdivider's alternative proposal.

Limiting options that subdividers have to provide water for new homeowners and businesses, while also increasing regulatory requirements, will increase the cost of construction. MAR is particularly concerned about limiting options to obtain groundwater when the permit process for new water appropriations, including appropriations for public water systems, is at a standstill in Montana's high-growth areas. By limiting options and increasing regulations, housing supply will be limited and prices will increase.