

EXHIBIT 1

DATE 3/21/11

SB 267

**Information
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SB 267**

Department of Environmental Quality
SB 267 FACT SHEET
March, 2011

Statutes:

MCA 75-5-703 Development and implementation of Total Maximum daily loads

Summary of Proposed Legislation

This bill allows the department to employ a more efficient “list-neutral” watershed approach when developing Total Maximum Daily Loads (TMDLs). This is accomplished by eliminating the focus of MCA 75-5-703(3) from the list of impaired waters that existed on May 5, 1997 as well as the deadline tied to that list. With latitude to use the most current list of impaired waters at the beginning of TMDL projects, the department can perform TMDL development more inclusively and efficiently using watersheds to define project scope.

Background

A TMDL is a pollutant budget for state waters based upon the state’s water quality standards. TMDLs are expressed as waste load allocations for point sources and load allocations for non-point sources. A TMDL provides the technical basis for waters impaired by combinations of point and non-point source pollution to attain water quality standards.

In 1997, the Montana Legislature directed the Department of Environmental Quality (DEQ) to develop TMDLs for waters identified as water quality limited (impaired) on the list required at MCA 75-5-702 Monitoring. The specific list the DEQ was directed to use was the list that existed on May 5, 1997.

As part of that original legislation, the Montana Legislature directed DEQ, by 1999, to review the list of waters required at MCA 75-5-702 and remove any waterbody that lacks sufficient credible data to support its listing (MCA 75-5-702(6).) This action resulted in the delisting of more than 450 waters, roughly half the waters identified as impaired on May 5, 1997. MCA 75-5-702(6) directed DEQ to reassess those waters and relist those that were threatened or impaired. This work was accomplished in 2006.

The delisting and subsequent reassessment actions basically reset the list that existed on May 5, 1997 to the list that existed in 2006. In addition to the reassessed waters many new additions have been made in the years 2000 – 2010.

Issue #1 - Efficiency

It was originally contemplated that waters identified in older versions of the impaired waters list represented the longest standing issues to be resolved and that those issues should be addressed in a chronological sequence of lists. However, during TMDL development the DEQ has found long-standing impairments to waters reported at a later date, or in some cases on waters not yet identified through the monitoring process (MCA 75-5-702). To adequately describe water quality issues on one water body it is necessary to describe water quality issues on adjacent water bodies due to the connectivity of waters.

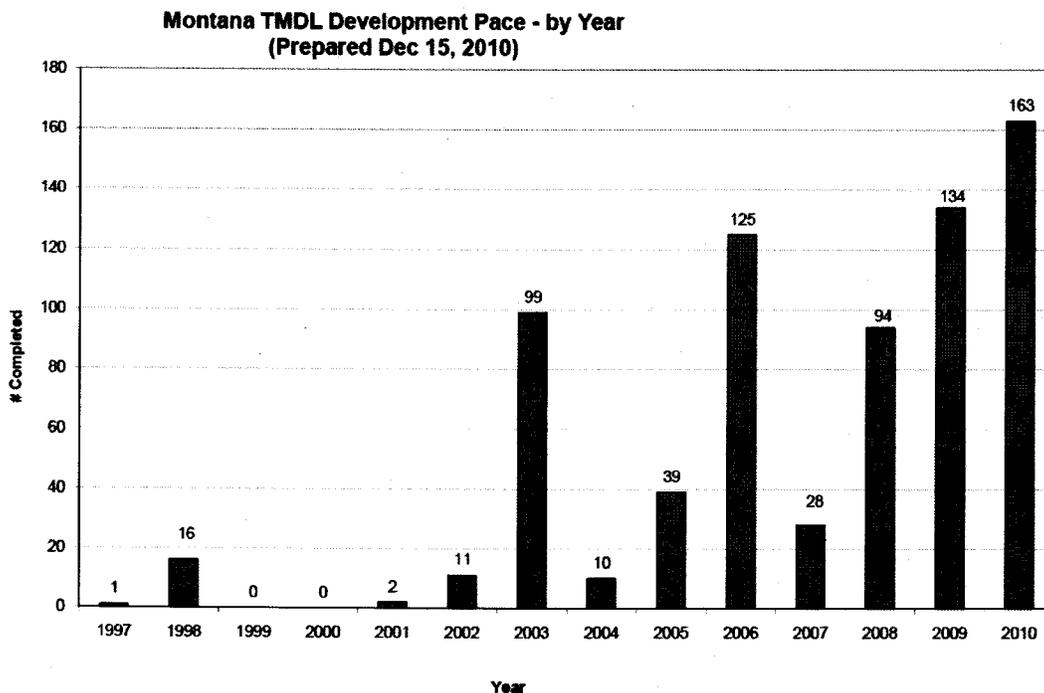
An analogy to what was originally directed would be:

A rancher directs his hired hand to repair fence by working around the perimeter of a section, fixing only the wires that had fallen thirteen years ago. Once the first cycle is completed, the hand is directed to re-work the same perimeter to fix wires that had fallen twelve years ago...and so on, and so forth.

Basically, the problem to be addressed (ability to manage grazing and not lose stock) is not resolved by the initial work, nor perhaps by the second, or third.

Similarly, in water quality management the DEQ should be directed to complete TMDL work in a particular watershed, as inclusively as possible, rather than hopping around the state working on individual, disconnected waters, based on lists of impaired waters from decades ago.

The merits of developing TMDLs in a list-neutral, watershed manner are demonstrated by the recent performance of TMDL development.



As illustrated above the "list-neutral" watershed approach achieved a higher and more consistent level of TMDL productivity over the last three years *with no increase in staff or funding*.

Issue #2 - Accountability

This bill allows greater discretion by eliminating a specific work unit target from the past. Instead, the department may be more inclusive when considering all impaired waters within a watershed TMDL.

A list of impaired waters is simply a snapshot in time. Waters may come or go from impaired waters lists based on improvements in the science underlying water quality standards, improvements to assessment techniques, improving conditions resulting from best management practices and natural attenuation or, alternatively, new or previously undiscovered issues.

Therefore, the only relevant list at the beginning of a TMDL project is the current list of impaired waters for the watershed.

To provide accountability, the DEQ will report its TMDL development progress to EQC at biennial reporting points on even numbered years.

Section-by-Section Analysis

All changes within MCA 75-5-703, Subsection 3

First three sentences, struck (Removes 1996 list as baseline list. Eliminates 15 year deadline tied to 1996 list.)

~~(3) Within 15 years from May 5, 1997, the department shall develop TMDLs for all water bodies on the list of waters that are threatened or impaired, as that list read on May 5, 1997. This provision does not apply to water bodies that are subsequently added or removed from the list according to the provisions of 75-5-702. The department shall establish a schedule for completing the TMDLs within the 15-year period established by this subsection.~~

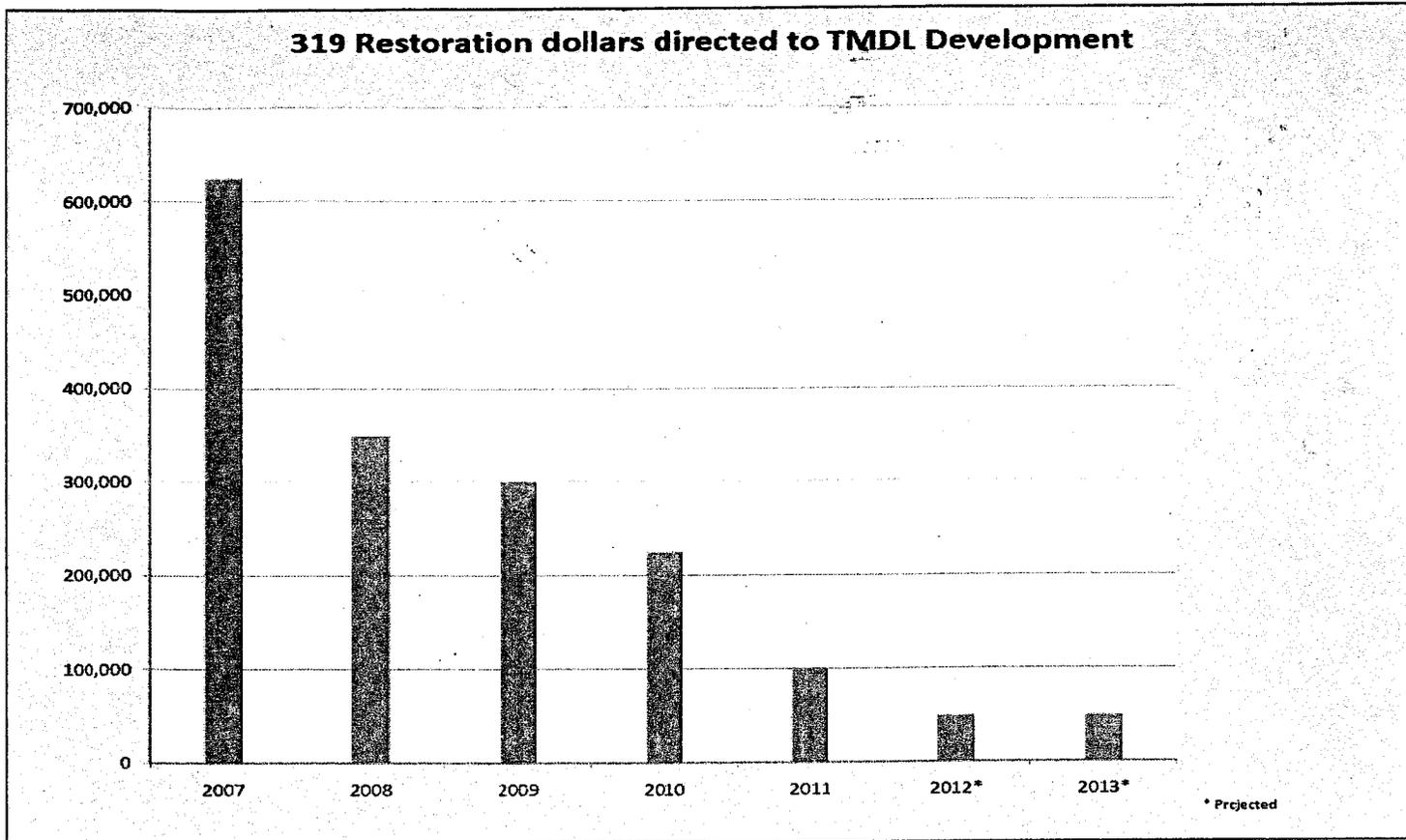
Fourth sentence, additions and deletions (Require department to provide reasonable schedule based on most recent list of impaired waters.)

~~The department shall establish a schedule must also provide that provides a reasonable timeframe for TMDL development for impaired and threatened water bodies that are listed subsequent to May 5, 1997, and are prioritized as set forth in 75-5-702 on the most recent list prepared pursuant to 75-5-702.~~

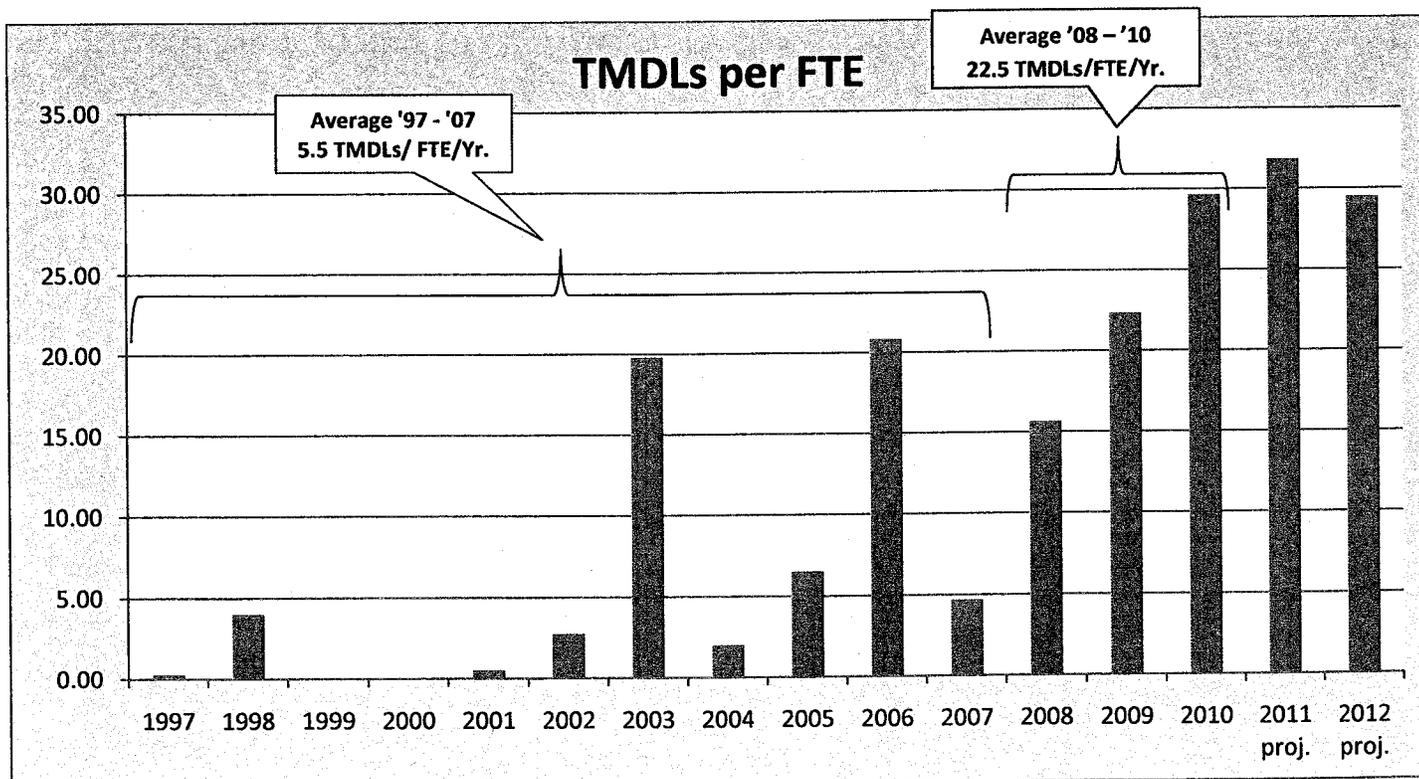
Fifth sentence, new (Requires department to report progress to EQC on or before July 1 of even numbered years.)

On or before July 1 of each even-numbered year, the department shall report the progress in completing TMDLs and the current schedule for completion of TMDLs for the water bodies that remain on the list to the environmental quality council.

Point 1 – Less Federal (319) money diverted to TMDL development. Instead, it goes to “on-the-ground” restoration.



Point 2 – Increase is due to the efficiency gained (per FTE) by list-neutral watershed approach.



1 SENATE BILL NO. 267

2 INTRODUCED BY C. VINCENT

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT OF
5 ENVIRONMENTAL QUALITY COMPLETE CERTAIN TOTAL MAXIMUM DAILY LOADS BY 2012 FOR
6 THREATENED OR IMPAIRED WATER BODIES; REQUIRING REPORTING OF TOTAL MAXIMUM DAILY
7 LOAD PROGRESS TO THE ENVIRONMENTAL QUALITY COUNCIL; AND AMENDING SECTION 75-5-703,
8 MCA."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11
12 **Section 1.** Section 75-5-703, MCA, is amended to read:

13 **"75-5-703. Development and implementation of total maximum daily loads.** (1) The department
14 shall, in consultation with local conservation districts and watershed advisory groups, develop total maximum daily
15 loads or TMDLs for threatened or impaired water bodies or segments of water bodies in order of the priority
16 ranking established by the department under 75-5-702. Each TMDL must be established at a level that will
17 achieve compliance with applicable water quality standards and must include a reasonable margin of safety that
18 takes into account any lack of knowledge concerning the relationship between the TMDL and water quality
19 standards. The department shall consider applicable guidance from the federal environmental protection agency,
20 as well as the environmental, economic, and social costs and benefits of developing and implementing a TMDL.

21 (2) In establishing TMDLs under subsection (1), the department may establish waste load allocations
22 for point sources and may establish load allocations for nonpoint sources, as set forth in subsection (8), and may
23 allow for effluent trading. The department shall, in consultation with local conservation districts and watershed
24 advisory groups, develop reasonable land, soil, and water conservation practices specifically recognizing
25 established practices and programs for nonpoint sources.

26 (3) ~~Within 15 years from May 5, 1997, the department shall develop TMDLs for all water bodies on the~~
27 ~~list of waters that are threatened or impaired, as that list read on May 5, 1997. This provision does not apply to~~
28 ~~water bodies that are subsequently added or removed from the list according to the provisions of 75-5-702. The~~
29 ~~department shall establish a schedule for completing the TMDLs within the 15-year period established by this~~
30 ~~subsection. The department shall establish a schedule must also provide that provides a reasonable timeframe~~

1 for TMDL development for impaired and threatened water bodies that are ~~listed subsequent to May 5, 1997, and~~
2 ~~are prioritized as set forth in 75-5-702 on the most recent list prepared pursuant to 75-5-702.~~ On or before July
3 1 of each even-numbered year, the department shall report the progress in completing TMDLs and the current
4 schedule for completion of TMDLs for the water bodies that remain on the list to the environmental quality council.

5 (4) The department shall provide guidance for TMDL development on any threatened or impaired water
6 body, regardless of its priority ranking, if the necessary funding and resources from sources outside the
7 department are available to develop the TMDL and to monitor the effectiveness of implementation efforts. The
8 department shall review the TMDL and either approve or disapprove the TMDL. If the TMDL is approved by the
9 department, the department shall ensure implementation of the TMDL according to the provisions of subsections
10 (6) through (8).

11 (5) For water bodies listed under 75-5-702, the department shall provide assistance and support to
12 landowners, local conservation districts, and watershed advisory groups for interim measures that may restore
13 water quality and remove the need to establish a TMDL, such as informational programs regarding control of
14 nonpoint source pollution and voluntary measures designed to correct impairments. When a source implements
15 voluntary measures to reduce pollutants prior to development of a TMDL, those measures, whether or not
16 reflected in subsequently issued waste discharge permits, must be recognized in development of the TMDL in
17 a way that gives credit for the pollution reduction efforts.

18 (6) After development of a TMDL and upon approval of the TMDL, the department shall:

19 (a) incorporate the TMDL into its current continuing planning process;

20 (b) incorporate the waste load allocation developed for point sources during the TMDL process into
21 appropriate water discharge permits; and

22 (c) assist and inform landowners regarding the application of a voluntary program of reasonable land,
23 soil, and water conservation practices developed pursuant to subsection (2).

24 (7) Once the control measures identified in subsection (6) have been implemented, the department shall,
25 in consultation with the statewide TMDL advisory group, develop a monitoring program to assess the waters that
26 are subject to the TMDL to determine whether compliance with water quality standards has been attained for a
27 particular water body or whether the water body is no longer threatened. The monitoring program must be
28 designed based on the specific impairments or pollution sources. The department's monitoring program must
29 include long-term monitoring efforts for the analysis of the effectiveness of the control measures developed.

30 (8) The department shall support a voluntary program of reasonable land, soil, and water conservation

1 practices to achieve compliance with water quality standards for nonpoint source activities for water bodies that
2 are subject to a TMDL developed and implemented pursuant to this section.

3 (9) If the monitoring program provided under subsection (7) demonstrates that the TMDL is not achieving
4 compliance with applicable water quality standards within 5 years after approval of a TMDL, the department shall
5 conduct a formal evaluation of progress in restoring water quality and the status of reasonable land, soil, and
6 water conservation practice implementation to determine if:

7 (a) the implementation of a new or improved phase of voluntary reasonable land, soil, and water
8 conservation practice is necessary;

9 (b) water quality is improving but a specified time is needed for compliance with water quality standards;

10 or

11 (c) revisions to the TMDL are necessary to achieve applicable water quality standards.

12 (10) Pending completion of a TMDL on a water body listed pursuant to 75-5-702:

13 (a) point source discharges to a listed water body may commence or continue, provided that:

14 (i) the discharge is in conformance with a discharge permit that reflects, in the manner and to the extent
15 applicable for the particular discharge, the provisions of 75-5-303;

16 (ii) the discharge will not cause a decline in water quality for parameters by which the water body is
17 impaired; and

18 (iii) minimum treatment requirements adopted pursuant to 75-5-305 are met;

19 (b) the issuance of a discharge permit may not be precluded because a TMDL is pending;

20 (c) new or expanded nonpoint source activities affecting a listed water body may commence and
21 continue if those activities are conducted in accordance with reasonable land, soil, and water conservation
22 practices;

23 (d) for existing nonpoint source activities, the department shall continue to use educational nonpoint
24 source control programs and voluntary measures as provided in subsections (5) and (6).

25 (11) This section may not be construed to prevent a person from filing an application or petition under
26 75-5-302, 75-5-310, or 75-5-312."

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