

OFFICE OF THE GOVERNOR
STATE OF MONTANA

STEVE BULLOCK
GOVERNOR



JOHN WALSH
LT. GOVERNOR

May 3, 2013

The Honorable Linda McCulloch
Secretary of State
State Capitol
Helena, MT 59620

Dear Secretary McCulloch:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto Senate Bill 19 (SB 19), "AN ACT DEFINING THE TERM 'COMBINED APPROPRIATION' FOR WATER WELLS AND DEVELOPED SPRINGS THAT ARE EXEMPT FROM PERMITTING; CLARIFYING THE DEFINITION OF THE TERM 'DEVELOPED SPRING'; AND AMENDING SECTIONS 85-2-102 AND 85-2-306, MCA."

As I indicated in my amendatory veto letter, SB 19 would limit the ability of senior water right holders to protect their property rights. "First in time, first in right" is a bedrock principle of water law, but any right is only as good as one's ability to protect it. SB 19 would perpetuate a system where many water wells could be developed in close proximity to one another, collectively pump substantial amounts of water, and the holder of an adjacent senior water right would be powerless to protect that right. Although senior water rights are held by many individuals and entities in this state, including cities and towns, hydroelectric facilities, and many others, a great many of our agricultural producers hold senior water rights.

I am very concerned about the impacts of SB 19 on agriculture, the largest sector of our economy. For example, if an agricultural producer seeks to develop a well for a center pivot to irrigate 100 acres of alfalfa, he or she must rightfully go through the State's permitting process in order to show that the water is both legally available and its use will not have an adverse effect on more senior water rights. However, under SB 19, if a subdivision is built next door and includes a well for each lot that, cumulatively, uses the same amount of water, no permit is required. Moreover, there is no basis for the senior water right holder to object. This makes no sense, and equity alone dictates that the permitting process should apply.

I am cognizant of the impacts of SB 19 on other uses, in particular land development. It is appropriate and necessary to have some threshold for well development that encourages development by allowing for new wells without the rigors of permitting.

I proposed amendments that would have provided some measure of protection for senior water rights holders while providing a great deal of flexibility for new development by allowing for multiple new exempt wells on a single parcel, protecting landowners from development on neighboring parcels,

Secretary McCulloch
May 3, 2013
Page 2

and preserving existing rights. The Senate agreed my amendments were a good idea. The House refused to consider them at all. I am surprised that the House leadership refused to consider the needs of our state's agricultural sector.

Unfortunately, SB 19 tips too far away from senior water rights and prior appropriation and does not address concerns that many individuals and organizations have with the cumulative effects of multiple, concentrated exempt wells. For these reasons, I am vetoing SB 19.

I encourage all interests to work together to find an acceptable balance in the upcoming rulemaking before the Department of Natural Resources and Conservation.

Sincerely,

A handwritten signature in black ink, appearing to read 'Steve Bullock', with a long horizontal flourish extending to the right.

STEVE BULLOCK
Governor

cc: Legislative Services Division
Jeff Essmann, President of the Senate
Mark Blasdel, Speaker of the House