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SENATE NATURAL RESOURCES
COMMITTEE NO. 11
BILL NO. 2-22-B
SB 347
www.montanatu.org

Testimony of Montana Trout Unlimited Opposing SB 347

Montana Trout Unlimited represents 3,400 conservation-minded anglers statewide. Our members fish, float, live and work along Montana's many rivers and streams. We have invested much in the last 25 years working cooperatively with senior water right holders throughout the state – including in the Blackfoot, Jefferson, Big Hole, Bitterroot and Clark Fork River basins – to find mutual solutions to ensure that diminishing water supplies can continue to accommodate municipal and residential use, irrigated agriculture and recreation. If passed, SB 347 will significantly upset the traditional legal water-use patterns and customs to which responsible Montanans have adhered for generations.

SB 347 will have many negative consequences. For instance:

1. It eliminates the only legal protection existing water right holders have to prevent interests who don't have water rights from dewatering streams. This jeopardizes the residential use and livelihoods of those who comply with Montana's prior appropriation system. SB 347 allows the mining industry and others to deplete streams and harm other users because they aren't required to have a water right for dewatering. SB 347 would institutionalize two standards: One for the mining industry and others who want to divert or dry up streams but who don't have to accommodate existing users who have water rights; and, one for existing users who must have a water right to put water to beneficial use. **In essence, SB 347 gives the mining industry's desire to manipulate water sources priority over all other beneficial uses of water.**
2. SB 347 leaves existing water right holders with no legal recourse to object to upstream dewatering. At best, all existing water right holders could do is file a lawsuit under tort law, but that could happen only after the damage has occurred. In cases caused by mining, this may be at a point when the injury is irreversible.
3. SB 347 would pave the way for mines proposed in the Cabinet Mountains to dewater streams that deliver water to downstream users along the East Fork of the Bull River, main Bull River and on the Lower Clark Fork, potentially harming the senior water rights of residential and agricultural users, as well as hydroelectric energy producers. Further, this dewatering threatens fisheries inside and adjacent

to federal wilderness, including two of the last populations of threatened bull trout in the lower Clark Fork region, both which have been the object of hundreds of thousands of dollars in conservation investments by the utilities, state and federal agencies, local landowners and anglers. **The passage of SB 347 would likely result in a blizzard of water use and environmental litigation.**

4. SB 347 would pave the way for potential mining proposals along the Blackfoot and Smith Rivers to dewater tributaries and mainstem streams that currently deliver water to existing irrigators with water rights. **Irrigators who lose water would have no recourse to object under Montana's water quality or water use laws.** In both cases the dewatering would impair the state-based instream flow rights the Montana Legislature granted to Montana FWP in the early 1970s. Streamflows in the Blackfoot and Smith support fisheries that contribute more than \$20 million a year to Montana's economy.
5. SB 347 could legalize additional dewatering of streams by anyone who wants to divert water for any purpose not listed in Montana water law as a beneficial use. Streamside owners could deplete streams to reduce mosquito habitat, remove beavers, eliminate flooding in low lying areas, or remove gravel or sand from stream bottoms, as well as other activities – and do it without having any regulatory oversight or having to accommodate the legal interests of downstream users with exiting water rights.

By codifying a special deal for industrial uses that want to dewater streams through groundwater depletion or diversion, SB 347 will harm existing water users, reduce the value of water rights (which are property rights), harm fisheries and benefit one economic interest at the expense of existing economic interests. Please oppose this bill.

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