

HOUSE BILL NO. 458

INTRODUCED BY Z. BROWN

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A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE SMITH RIVER LEGACY ACT; ESTABLISHING AND REQUIRING A LEGACY PERMIT FOR CERTAIN ACTIVITIES IN THE SMITH RIVER WATERSHED; PROVIDING RULEMAKING AUTHORITY; AND ALLOWING FOR REVOCATION OF PERMITS."

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 6] may be cited as the "Smith River Legacy Act".

NEW SECTION. **Section 2. Findings -- purpose.** (1) The legislature finds:

(a) maintaining and protecting designated, existing, and anticipated uses of water and water quality is important to the health and integrity of the Smith River;

(b) the health of the mainstem Smith River is tied to the health and integrity of its upstream tributaries, including but not limited to hydrologically connected waters, wetlands, springs, seeps, intermittent and ephemeral waters, and ground water that possess a significant nexus; and

(c) significant new additions of pollutants of concern, including metals, and significant changes in existing pH, temperature, and flow threaten the special values of the Smith River.

(2) The purpose of [sections 1 through 6] is to limit significant new introductions of pollutants into the Smith River watershed, prohibit significant changes in biology, chemistry, or physical integrity, and ensure that no significant degradation of water quality occurs.

NEW SECTION. **Section 3. Rulemaking.** (1) The board shall adopt rules to implement the provisions of [sections 1 through 6].

(2) The rules must include a physical description of the Smith River watershed, the Smith River, and the tributaries regulated by [sections 1 through 6].

NEW SECTION. **Section 4. Legacy permit -- determination.** (1) A person shall obtain a legacy permit



1 from the department before the person may commence an activity in the Smith River watershed if the activity:

2 (a) requires a permit pursuant to Title 75, chapter 5;

3 (b) requires a permit pursuant to Title 82; or

4 (c) requires a permit or a change in appropriation right for an industrial or municipal water use pursuant
5 to Title 85.

6 (2) In evaluating the proposed activity, the department shall determine if the applicant proves by clear
7 and convincing evidence that the proposed activity will not significantly affect the biological, chemical, or physical
8 integrity of the Smith River or its tributaries as determined by an analysis of whether:

9 (a) designated, existing, and anticipated uses of the Smith River and its tributaries will be fully protected;

10 (b) there exist relevant water quality protection practices proven to fully prevent degradation of water
11 quality and protect designated, existing, or anticipated uses;

12 (c) the applicant will implement the relevant water quality protection practices prior to and during the
13 proposed activity and as necessary to maintain and enhance conditions after the proposed activity concludes;
14 and

15 (d) the proposed activity will contribute to significant, adverse cumulative impacts on water quality in
16 combination with past, present, and reasonably foreseeable future activities.

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18 **NEW SECTION. Section 5. Permit decisions.** (1) (a) The department shall review a permit application
19 for completeness within 60 days of the receipt of the initial application and within 30 days of receipt of responses
20 to notices of deficiencies.

21 (b) The initial completeness notice must note all major deficiency issues, based on the information
22 submitted. The department and the applicant may extend the timeframes in subsection (1)(a), by mutual
23 agreement, by not more than 75 days.

24 (c) An application is considered complete unless the applicant is notified of a deficiency within the
25 appropriate review period.

26 (2) Within 30 days of the date the application is complete, the department shall issue a preliminary
27 decision to approve or deny the permit. The preliminary determination must include:

28 (a) a statement of the basis for the decision, utilizing detailed analyses of potential individual and
29 cumulative impacts to water resources, habitat, and biological integrity of the Smith River and its tributaries; and

30 (b) if the preliminary decision is to approve the permit, a detailed description of all conditions applied to

1 any authorization to degrade state waters pursuant to 75-5-303, including but not limited to monitoring
2 requirements, required water protection practices, reporting requirements, effluent limits, and methods of
3 determining compliance with the prohibition against any significant degradation in [section 2].

4 (3) The department shall provide notice of the preliminary decision and open a 60-day comment period.

5 (4) The department shall issue a final determination and responses to the comments within 30 days of
6 the close of the comment period in subsection (3).

7 (5) An applicant for a permit may request a hearing on a denial of the application by submitting a written
8 request for a hearing within 30 days of receipt of written notice of the denial. The request must state the reason
9 that the hearing is requested.

10 (6) All hearings under this section must be conducted by the board in accordance with the Montana
11 Administrative Procedure Act. A person whose interests may be adversely affected as a result of an action taken
12 pursuant to this section may become a party to any proceeding held under this part upon a showing that the
13 person is capable of adequately representing the interests claimed.

14 (7) As used in this section, "person" means an individual, corporation, partnership, or other legal entity.
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16 **NEW SECTION. Section 6. Permit revocation.** (1) The department may assess the impacts of an
17 approved activity authorized pursuant to [sections 1 through 6] at any time and may revoke a permit if the best
18 available science indicates the permitted activity:

19 (a) is significantly affecting the biological, chemical, or physical integrity of the Smith River or its
20 tributaries;

21 (b) is impairing designated or existing uses; or

22 (c) has a reasonable potential to impair future uses.

23 (2) A permittee whose permit is revoked may request a hearing in the manner provided in [section 5].
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25 **NEW SECTION. Section 7. Codification instruction.** [Sections 1 through 6] are intended to be codified
26 as an integral part of Title 75, chapter 5, and the provisions of Title 75, chapter 5, apply to [sections 1 through 6].
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