

**2003-2004 Environmental Quality Council
Draft Work Plan**

APPENDICES

May 29, 2003

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HOUSE JOINT RESOLUTION NO. 4

INTRODUCED BY LANGE

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY TO INVESTIGATE OPTIONS FOR IMPROVING THE SUPPLY AND DISTRIBUTION OF WATER IN MONTANA AND TO EVALUATE THE WATER STORAGE POLICY ESTABLISHED IN SECTION 85-1-703, MCA; AND REQUIRING THAT THE FINAL RESULTS OF THE STUDY BE REPORTED TO THE 59TH LEGISLATURE AND THE MONTANA CONGRESSIONAL DELEGATION.

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY TO INVESTIGATE OPTIONS FOR IMPROVING THE SUPPLY AND DISTRIBUTION OF WATER IN MONTANA AND TO EVALUATE THE WATER STORAGE POLICY ESTABLISHED IN SECTION 85-1-703, MCA; AND REQUIRING THAT THE FINAL RESULTS OF THE STUDY BE REPORTED TO THE 59TH LEGISLATURE AND THE MONTANA CONGRESSIONAL DELEGATION.

WHEREAS, section 85-1-101, MCA, establishes the state's policies for water resources; and

WHEREAS, section 85-1-101(2), MCA, provides "The public policy of the state is to promote the conservation, development, and beneficial use of the state's water resources to secure maximum economic and social prosperity for its citizens"; and

WHEREAS, section 85-1-101(6), MCA, states "The public interest requires the construction, operation, and maintenance of a system of works for the conservation, development, storage, distribution, and utilization of water, which construction, operation, and maintenance is a single object and is in all respects for the welfare and benefit of the people of the state"; and

WHEREAS, Montana has experienced severe drought and significant floods; and

WHEREAS, the state has an opportunity and a responsibility to take proactive measures to mitigate the impacts of drought and floods by storing surplus water and promoting efficiency; and

WHEREAS, section 85-2-105, MCA, requires the Environmental Quality Council to advise the Legislature on the adequacy of the state's water policy.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to:

- (1) evaluate the efficiency of water distribution systems;
- (2) evaluate measures that promote the efficient use of water;
- (3) evaluate return flow impacts;

(4) study water banking as a means to alleviate water shortages;

(5) investigate options for improving the supply and distribution of water in Montana, including the development of offstream storage facilities;

(6) evaluate the water storage policy established in section 85-1-703, MCA; and

(7) evaluate the effects of excessive fuel levels on federal and state timbered lands to determine the impacts of the use of available water by timber versus the amount of water release by a watershed into Montana watercourses.

BE IT FURTHER RESOLVED, that the study be conducted with the participation and involvement of investors and developers and persons interested in or affected by water management, including landowners, conservation districts, the Department of Natural Resources and Conservation, the Department of Fish, Wildlife, and Parks, industries, utilities, recreational water users, agricultural water users, and others.

BE IT FURTHER RESOLVED, that the study consider ways to encourage participation by the private sector, tribal governments, and the federal government in improving the supply and distribution of water in Montana.

BE IT FURTHER RESOLVED, that, if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2004.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 59th Legislature and the Montana Congressional Delegation.

Legislative Poll Ranking = 8 of 13

HOUSE JOINT RESOLUTION NO. 43

INTRODUCED BY WINDY BOY, BALLANTYNE, BECKER, BERGREN, BIXBY, BRANAE, BUZZAS, CALLAHAN, CARNEY, P. CLARK, COONEY, CYR, DICKENSON, DOWELL, ELLINGSON, ELLIOTT, FACEY, FRANKLIN, GALLUS, GALVIN-HALCRO, GIBSON, GOLIE, GUTSCHE, HAINES, HANSEN, HARRIS, HEDGES, JACOBSON, JAYNE, JUNEAU, KITZENBERG, LAMBERT, LANGE, LENHART, LINDEEN, MATTHEWS, MUSGROVE, NEWMAN, PARKER, RASER, SMALL-EASTMAN, TESTER, TOOLE, WANZENRIED, WEISS

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF THE SURFACE WATER AND GROUND WATER IMPACTS OF THE ABANDONED ZORTMAN AND LANDUSKY MINE SITES ON THE MILK AND MISSOURI RIVER WATERSHEDS AND THE EFFECTIVENESS OF THE STATE RECLAMATION EFFORTS AT THE ZORTMAN AND LANDUSKY MINE SITES IN PROTECTING THE WATERSHEDS; AND REQUESTING THAT THE RESULTS OF THE STUDY BE REPORTED TO THE 59TH LEGISLATURE.

WHEREAS, Pegasus Gold Corporation (Pegasus), through its subsidiary, Zortman Mining Incorporated (ZMI) and its predecessors, owned and operated the Zortman mine and the Landusky mine located in the Little Rocky Mountains of Phillips County, Montana, from 1979 until ZMI entered Chapter 7 bankruptcy in 1998 and abandoned the site; and

WHEREAS, the State of Montana's Department of Environmental Quality (DEQ) is presently directing the land reclamation and water treatment activities and operating the water treatment plants at the mine sites; and

WHEREAS, in 2002, the Bureau of Land Management and the DEQ prepared a joint supplemental environmental impact statement to evaluate alternatives for the final reclamation of the Zortman and Landusky mine sites; and

WHEREAS, the effectiveness and sufficiency of the current and proposed reclamation are not universally acceptable, and the reclamation is admittedly underfunded; and

WHEREAS, water discharges from the mine sites require treatment efforts, possibly into perpetuity; and

WHEREAS, the Little Rocky Mountains are upland water recharge areas for several watersheds and tributaries that supply the Milk River and the Missouri River; and

WHEREAS, current reclamation plans for water treatment at the mine sites contemplate the complete cessation of water treatment as soon as the year 2028.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to review the reclamation efforts at the

Zortman and Landusky mine sites to:

- (1) identify the impacts on surface water and ground water, including the recent degradation of Swift Gulch, attributable to past or present activities at the mine sites;
- (2) determine if there are identifiable downstream impacts on the Milk and Missouri River drainages attributable to past or present activities at the mine sites;
- (3) determine whether the surface water and ground water resources in the watersheds affected by the mine operations are being protected by the current or proposed state reclamation; and
- (4) determine the potential impacts to surface water and ground water resources if additional funding for water treatment and reclamation does not become available.

BE IT FURTHER RESOLVED, that the study be conducted by reviewing available research reports and by soliciting testimony and information from knowledgeable individuals, academic institutions, and the appropriate local, state, tribal, and federal agencies.

BE IT FURTHER RESOLVED, that, in particular, representatives of the Fort Belknap Reservation Environmental Department be included in the study and participate in developing findings and recommendations.

BE IT FURTHER RESOLVED, that, if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2004.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 59th Legislature.

Legislative Poll Ranking = 10 of 13

HOUSE JOINT RESOLUTION NO. 35

INTRODUCED BY BIXBY, SMALL-EASTMAN

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY REGARDING MONTANA'S SHARE OF WATER FROM THE INTERSTATE TRIBUTARIES PURSUANT TO THE YELLOWSTONE RIVER COMPACT.

WHEREAS, the Yellowstone River Compact defines the "interstate tributaries" to include the following rivers that contribute to the flow of the Yellowstone River in the State of Montana, along with tributaries of these rivers: the Clarks Fork of the Yellowstone River, the Big Horn River (except the Little Big Horn River), the Tongue River, and the Powder River; and

WHEREAS, the agricultural communities along the interstate tributaries of the Yellowstone River depend on a sufficient supply of high-quality water for their livelihood and survival; and

WHEREAS, these agricultural communities have not been receiving a sufficient supply of water to meet their needs; and

WHEREAS, the headwaters of the interstate tributaries are in Wyoming; and

WHEREAS, because of concern that the waters of the interstate tributaries would soon become fully appropriated by Wyoming, in 1932 the State of Montana began urging the state of Wyoming to negotiate a compact to divide the waters of the interstate tributaries between Montana and Wyoming; and

WHEREAS, after 18 years of negotiations, in 1951, Montana, Wyoming, and North Dakota agreed to the terms of the Yellowstone River Compact, which is codified in Title 85, chapter 20, part 1, MCA; and

WHEREAS, the purpose of the Yellowstone River Compact stated in section 85-20-102, MCA, provides that all appropriative rights to the beneficial uses of the waters of the interstate tributaries of the Yellowstone River existing in each signatory state as of January 1, 1950, are recognized and must continue to be enjoyed in accordance with the laws governing the acquisition and use of water under the doctrine of appropriation; and

WHEREAS, the purpose of the Yellowstone River Compact stated in section 85-20-102, MCA, provides that all appropriative rights to the beneficial uses of the waters of the interstate tributaries of the Yellowstone River acquired after January 1, 1950, are subject to distribution in the states of Montana and Wyoming in accordance to the percentages in the different basins as provided in Article V of the Compact; and

WHEREAS, the purpose of the Yellowstone River Compact stated in section 85-20-102, MCA, is to enable the State of Montana and the Yellowstone River Compact Commission to comply with and to administer the percentage allocations as provided in Article V of the Compact; and

WHEREAS, Montana has not documented the receipt of its lawful share of water under the Yellowstone River Compact since ratification of the Compact; and

WHEREAS, inflows from the Tongue River to the Tongue River Reservoir were measured at all-time lows in the summer of 2001; and

WHEREAS, the Tongue River Reservoir did not receive sufficient water to provide the agricultural producers in the Tongue River drainage with enough water for irrigation in 2000, 2001, and 2002; and

WHEREAS, the shortage of water in these years resulted in diminished crop yields; and

WHEREAS, the reasons for recent low water flows in the interstate tributaries must be documented before Montana can develop a sound strategy for receiving, storing, and distributing Montana's water; and

WHEREAS, Montana's acceptance of the Yellowstone River Compact was based in part on assurances that large federal water storage projects would be built on the interstate tributaries; and

WHEREAS, except for the Yellowtail Dam, the federal water projects have not been built; and

WHEREAS, the distribution of water between Montana and Wyoming, as provided in Article V of the Yellowstone River Compact, has not been implemented; and

WHEREAS, the distribution of water under the Compact cannot be implemented without federal water storage projects to store the water for distribution in Montana; and

WHEREAS, the State of Montana has entered into compacts with the Northern Cheyenne Tribe and the Crow Tribe that affect the allocation of water from the interstate tributaries.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to:

- (1) investigate whether Montana is receiving its lawful share of water from the interstate tributaries pursuant to the Yellowstone River Compact; and
- (2) if the investigation determines that Montana is not receiving its lawful share of water, make recommendations regarding how to ensure that Montana receives its lawful share of water from the interstate tributaries pursuant to the Yellowstone River Compact.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2004.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 59th Legislature.

Legislative Poll Ranking = 11 of 13

HOUSE JOINT RESOLUTION NO. 40

INTRODUCED BY YOUNKIN, GALLUS

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE LEGISLATIVE COUNCIL TO DESIGNATE AN INTERIM COMMITTEE TO STUDY ISSUES ASSOCIATED WITH WATER RIGHTS FOR PRIVATE PONDS FOR FISH, WILDLIFE, RECREATIONAL, WETLAND, AESTHETIC, AND GRAVEL MINING USES; AND REQUESTING A REPORT OF THE FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS OF THE STUDY TO THE 59TH LEGISLATURE AND THE GOVERNOR.

WHEREAS, Montana's scarce water resources are of vital importance to the state, its environment, and its citizens for existing and future prosperity; and

WHEREAS, as a result of Montana's arid climate, water has been appropriated from Montana's rivers and streams under the prior appropriation doctrine for more than 100 years; and

WHEREAS, many of Montana's river basins are now closed to new appropriations; and

WHEREAS, Montanans will increasingly find more basins closed by either the Legislature or the Department of Natural Resources and Conservation because of overappropriation of water; and

WHEREAS, continuing diversions from Montana's overappropriated rivers and streams can adversely impact historic water users; and

WHEREAS, continuing diversions from Montana's overappropriated rivers and streams can adversely impact existing wetlands, native fisheries, and other aquatic values; and

WHEREAS, the number of applications for new water rights for ponds in Montana has been increasing, even in closed river basins; and

WHEREAS, it is difficult to quantify the minimum or maximum amount of water needed for ponds for fish, wildlife, recreational, wetland, or aesthetic uses; and

WHEREAS, the impacts to a stream system resulting from a diversion of water from that stream for a pond can be much greater than the impacts resulting from an instream use of water that is nonconsumptive; and

WHEREAS, under Article IX, section 3, of the Montana Constitution, all waters within the boundaries of the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided by law; and

WHEREAS, under Article IX, section 3, of the Montana Constitution, the Legislature shall provide for the administration, control, and regulation of water rights.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee to:

(1) evaluate whether or not water use for private ponds for fish, wildlife, recreational, wetland, or aesthetic uses should be considered a beneficial use of water under Montana law;

(2) if private ponds for fish, wildlife, recreational, wetland, or aesthetic uses are to be considered beneficial uses, evaluate whether or not criteria or limits should be established to determine the size of a pond or the amount of water used for a pond that can be considered a beneficial use;

(3) evaluate what measures, if any, are needed to address:

(a) the proliferation of private ponds in Montana that are being constructed without first seeking or obtaining water rights; and

(b) the proliferation of ponds associated with gravel mining operations;

(4) examine the definition of "nonconsumptive use" and:

(a) evaluate whether or not additional criteria should be established to determine whether or not a water use is a nonconsumptive use; and

(b) identify what presumptions, if any, should be applied to the term "nonconsumptive"; and

(5) evaluate any other issues related to the use of water for private ponds for fish, wildlife, recreational, wetland, aesthetic, or gravel mining uses.

BE IT FURTHER RESOLVED, that the interim committee seek information and ideas from the following parties in the process of evaluation and before reaching conclusions and making recommendations for future legislative action:

(1) the Department of Natural Resources and Conservation;

(2) the Department of Fish, Wildlife, and Parks;

(3) Montana water right holders and water users;

(4) organizations representing water right holders and water users, including but not limited to organizations representing agricultural water users, wildlife and wetland conservation interests, anglers, water-based recreational users, and water right consultants;

(5) organizations representing the land development industry and the real estate industry; and

(6) other interested persons or organizations.

BE IT FURTHER RESOLVED, that the interim committee may request assistance from any agency of state government, the Montana University System, organizations, and knowledgeable citizens, in addition to receiving staff support from the Legislative Services Division.

BE IT FURTHER RESOLVED, that the committee prepare a report of its findings, conclusions, and recommendations by September 15, 2004, and submit the report to the 59th Legislature and the Governor.