



August 30, 2010

Legislative Services Division
P.O. Box 201704
Helena, MT 59620-1704

Dear Mr. Joe Kolman:

Northern Plains Resource Council (Northern Plains) submits the following comments in response to the August 2010 edition of *Boiling it Down*.

Northern Plains is a grassroots conservation and family agriculture group. We organize Montana citizens to protect our clean water, family farms and ranches, and unique quality of life. These comments are submitted on behalf of the organization and our members, especially those who own property and reside in Montana counties downstream of the proposed discharges. These members are dependent on ground and surface waters for their livelihoods as farmers and ranchers. These waters include not only the Tongue River *but also* its tributaries. Our members are directly affected by coal bed methane discharges and believe that enforcement of comprehensive water quality standards is imperative.

We oppose the recommendation option on pages 10 and 11 of the August 2010 edition of *Boiling it Down* and the proposed legislation LC9002. This legislation would expand the legal marketing of water to allow water to be sold to the highest bidder without first identifying and analyzing to whom it is being sold. Currently, under MC 85-2-310, water can be sold or marketed only if contracts are in place and requirements are filled. This bill would exempt water marketing for aquifer recharge or mitigations from these requirements, allowing private entities greater latitude in selling the state's water, while reducing the state's capacity to provide broad oversight of water allocation in Montana.

Water belongs to the state and should be regulated by the state. The DNRC must become more active in water management to assure that water is reallocated where it needs to be. The DNRC must set up checks and balances to conserve water and utilize it in the best way possible. Allowing water to be marketed to unknown buyers will increase the potential for illegal speculation in water, and will reduce the state's ability to properly allocate water resources. Please drop LC9002 from your recommendations.

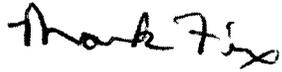
We also oppose the recommendation option on page 12 of the August 2010 edition of *Boiling it Down* and the proposed legislation LC9999. This bill would allow private entities to mess with water rights and not pay the consequences if they lose. Please drop the proposed LC9999.

In regards to the Water and Coal Bed Methane section beginning on page 43, the Honzel ruling on page 44-48 needs to be updated to the ruling by Judge Seeley, July 2010, which

reaffirmed Honzel's decision. Also, the case Diamond Cross Properties v. State of Montana, Pinnacle Gas Company et al., decided in July 2008, ruling that groundwater withdrawals, and therefore evaporation ponds, were unconstitutional should be included in this summary of Montana regulations.

Thank you for taking our comments into consideration.

Sincerely,

A handwritten signature in black ink that reads "Mark Fix". The signature is written in a cursive, slightly slanted style.

Mark Fix, Chair
Coal Bed Methane Task Force



Brian Schweitzer, Governor

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TO: Environmental Quality Council
FROM: George Mathieus, DEQ
SUBJECT: Clarification regarding July Nutrient Work Group presentation
DATE: September 7, 2010

This memo is to provide clarification on some questions derived from the Nutrient Work Group discussion on July 22, 2010.

Point 1: There was considerable question and discussion related to the Department's ability to deal with natural conditions such as floods, subsequent high flows, drought and other natural conditions.

- As I indicated in testimony, the Department manages natural conditions on a regular basis. A key point is that 75-5-306 MCA, already addresses this issue, and does not allow the Department to require treatment purer than a natural condition.

Point 2: Questions and discussion surrounding my "leading the nation" comment warrant some statistics.

- As of November 24, 2009, 46 of 50 states have submitted plans to EPA for the development of numeric nutrient criteria.
- Currently, 25 States have some form of numeric nutrient criteria on the books, including Montana. (ARM 16.30.631)
- To the best of the Department's knowledge, one state (Florida) has been successfully sued over lack of criteria development. EPA promulgated nutrient criteria for Florida as a result. Two other states (Kansas, Wisconsin) have each received a Notice of Intent to sue over the lack of progress in adopting numeric nutrient criteria. Additionally, activists have petitioned EPA to take action on other states in the Mississippi River basin, including Ohio, Illinois, and Iowa.
- While Montana is clearly NOT leading the nation in numeric nutrient criteria development per se, we are proud to be the leaders in developing a transparent process whereby stakeholder involvement is key to successful implementation of our standards. The Department is committed to ensuring the adoption of numeric criteria will only occur when the development of the implementation component is complete. While other states have developed criteria in the absence of a publicly reviewed implementation process, the Department will continue to move forward with our current transparent process to tie sensible implementation to adoption of the numbers.

More detailed information can be found at the following websites:

<http://epa.gov/waterscience/criteria/nutrient/strategy/status.html>

<http://deq.mt.gov/wqinfo/NutrientWorkGroup/default.mcp>

Point 3: Will Montana have stricter standards than other states, such as New Jersey for example.

- In the nation, in our watershed, the corn belt of Iowa, Nebraska, etc has very high nutrient loads and is a big contributor to Gulf Hypoxia. In Montana, synoptic probabilistic stream sampling showed that about 15-20% of streams samples exceed our proposed ecoregionally-based criteria. Since natural loading has been taken into account in the development of the criteria, this indicates that about 80% of our streams have natural levels of nutrients and about 20% have levels elevated above natural, due to human causes.
- The Department continues to work with other states across the nation as we develop numeric nutrient criteria. The table below shows some comparisons of where Montana's draft numbers line up with other states and counties.

Montana draft nutrient criteria compared to recent criteria used in or being considered by other states, countries.

State or Country	Forested Mountainous Regions		Plains Agricultural Regions	
	Total Phosphorus (mg/L)	Total Nitrogen (mg/L)	Total Phosphorus (mg/L)	Total Nitrogen (mg/L)
Montana^a	0.03	0.30	0.10 to 0.20	1.12
Vermont^b	0.01 to 0.03	0.3 to 0.5		
Colorado^c	0.09	0.8	0.14	1.32
Ohio^d			0.04 to 0.10	
Maine^e	0.01 to 0.03			
Calgary, Alberta, Canada^f	0.014			
New Zealand^g	0.026	0.295		
Australia^h	0.02	0.25		

^a Typical regional criteria as they will appear in upcoming addendum to Suplee *et al.* (2008).

^b Presented at 7th National Monitoring Conference, Denver, CO, April 2010.

Available at http://acwi.gov/monitoring/conference/2010/B3/B3_Kamman.pdf

^c As presented to Colorado Water Quality Control Division, February 9, 2010.

^d Ohio Environmental Protection Agency, OWEA Government Affairs Workshop, March 2010.

^e Presented at National Nutrient Criteria All-states Meeting, Dallas, TX, February 2006.

^f *Bow River Basin Watershed Water Quality Objective and Indicators*, March 2008. Prepared by the Bow Basin Watershed Management Plan Technical Committee for the Steering Committee.

^{g,h} ANZECC & ARMCANZ Guidance, 2000. Available at

<http://www.mfe.govt.nz/publications/water/anzecc-water-quality-guide-02/anzecc-water-quality-guide-02-pdfs.html>

- Finally, the Department's draft criteria are protective for the designated beneficial uses of the state and tailor-made for the ecoregions within the state. However, if EPA were to set criteria for Montana today, their numbers could be conservative and subsequently more stringent than Montana's draft criteria. This is partially due to setting standards at the national, or regional level versus state level.