HOUSE BILL NO. 502

INTRODUCED BY M. PHILLIPS

A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING CARBON SEQUESTRATION; REQUIRING A PERMIT FOR A CARBON DIOXIDE SEQUESTRATION WELL; AUTHORIZING THE BOARD OF ENVIRONMENTAL REVIEW TO ADOPT RULES FOR PERMIT REQUIREMENTS, FEES, PENALTIES, LIABILITY INSURANCE, AND BONDING; REQUIRING NOTICE OF PERMIT APPLICATIONS FOR CARBON DIOXIDE SEQUESTRATION WELLS; REQUIRING NOTICE OF LEASE APPLICATIONS FOR CARBON DIOXIDE SEQUESTRATION WELLS; REQUIRING COORDINATION WITH THE BOARD OF OIL AND GAS CONSERVATION FOR CERTAIN WELLS; DECLARING THAT THE STATE OF MONTANA OWNS THE EXCLUSIVE RIGHT TO USE ALL PORE SPACE IN ALL STRATA UNDERLYING ALL SURFACES EXCEPT THOSE OWNED BY THE UNITED STATES OR TRIBAL GOVERNMENTS; AFFIRMING THE DOMINANCE OF THE MINERAL ESTATE; AUTHORIZING THE STATE BOARD OF LAND COMMISSIONERS TO LEASE PORE SPACE; EXEMPTING A CARBON DIOXIDE SEQUESTRATION WELL FROM GROUND WATER PERMIT REQUIREMENTS; AMENDING SECTIONS 70-16-101, 75-1-1001, 75-5-103, 75-5-401, AND 77-2-304, MCA; AND PROVIDING EFFECTIVE DATES."

WHEREAS, geologic storage of carbon dioxide will benefit the citizens of the state and the state's environment by reducing greenhouse gas emissions; and

WHEREAS, Montana has a range of geologic sites that could be used for carbon dioxide storage, including depleted oil reservoirs and coal seams, without material interference with the ownership of minerals within those geologic formations, and it is possible that geologic carbon sequestration in the state could become a major part of the economy, producing jobs while preserving the environment;

WHEREAS, geologic pore space is a common natural resource held in trust by the state of Montana for the environmental benefit of the general public, and the ownership, together with the rights of the public to utilize that resource, must be clarified by legislative declaration;

WHEREAS, under the public trust doctrine, a public easement to utilize geologic pore space for the benefit of the public currently exists and burdens all property within the state of Montana, with the exception of that of the federal government and tribal governments; and

WHEREAS, the state of Montana has a corresponding duty to acknowledge and protect public property rights that will guarantee community access to these resources.

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 9] may be cited as the "Geologic Carbon Sequestration Act".

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 9], the following definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502.

(2) "Carbon dioxide" means anthropogenically sourced carbon dioxide of sufficient purity and quality.

(3) (a) "Carbon dioxide sequestration well" means a well that is used for injection of carbon dioxide into a geologic formation for permanent storage.

(b) The term does not include a well regulated under Title 82, chapter 11, in which carbon dioxide is injected for the purpose of enhancing the recovery of oil and gas.

(4) "Department" means the department of environmental quality provided for in 2-15-3501.

(5) "Geologic sequestration site" or "site" means the underground geologic formation, including but not limited to deep saline formations, basalt or oil shale formations, depleted oil and gas reservoirs, and unminable coal beds, where carbon dioxide is injected and stored.

(6) "Verification and monitoring" means measuring the amount of carbon dioxide stored at a specific geologic sequestration site, checking the site for leaks or deterioration of storage integrity, and ensuring that carbon dioxide is stored in a way that is permanent and not harmful to the ecosystem. The term includes:

(a) using models to show, before injection is allowed, that injected carbon dioxide will be securely stored. Modeling includes but is not limited to consideration of seismic activity, possible paths for fugitive emissions, and chemical reactions in the geologic formation.

(b) tracking plume behavior after injection of carbon dioxide, including the use of pressure monitoring; and

(c) establishing a system of leak monitors.

(7) "Well" means a bored, drilled, or driven shaft with a depth that is greater than the largest surface dimension.

NEW SECTION. **Section 3. Rules for administration and permitting.** (1) The board shall adopt rules necessary for the administration and enforcement of [sections 1 through 9]. The rules must include but are not

limited to provisions that address:

(a) establishment of a geologic carbon dioxide sequestration program, including a permit system and requirements and procedures for applications and for issuing carbon dioxide sequestration well permits by the department;

(b) evaluation of possible geologic sequestration sites, including but not limited to geologic surveys, existing data, test wells, and the feasibility of remediation;

(c) recordkeeping and reporting requirements sufficient to measure the effectiveness of carbon dioxide sequestration wells and sites;

(d) standards for determining the suitability of carbon dioxide for injection, considering the quality and purity of the carbon dioxide in order to not compromise the safety and efficiency of the geologic sequestration site;

(e) procedures and requirements that a permitholder or another entity shall follow to ensure that the drilling, casing, and plugging of carbon dioxide sequestration wells and other wells drilled into or through a carbon sequestration site do not allow carbon dioxide to move out of one stratum into another, the intrusion of water into the carbon dioxide strata, seepages, or the pollution of drinking water supplies;

(f) characterization of the injection zone and aquifers above and below the injection zone that may be affected, including applicable pressure and fluid chemistry data to describe the projected effects of injection activities;

(g) verification and monitoring at geologic sequestration sites;

(h) mitigation of leaks, including the ability to stop the leaking of carbon dioxide and to address impacts of leaks;

(i) restoration of surface lands;

(j) minimum levels of liability insurance that must be carried by the permitholder while the well is under construction, during the lifetime of the well's operation, and for 75 years following closure of the well;

(k) furnishing, updating, and release of a reasonable bond with good and sufficient surety, conditioned for performance of the duty to comply with [sections 1 through 9] and rules adopted by the board. The bond provided by the permitholder must be sufficient to guarantee the effectiveness of the carbon dioxide sequestration well and site and to cover costs to offset carbon dioxide emissions because of any failure of a carbon dioxide sequestration well or geologic sequestration site to contain carbon dioxide.

(l) fees that are commensurate with the cost of implementing and administering [sections 1 through 9].

(2) The rules must include, at a minimum, requirements pursuant to applicable federal regulatory

standards established by:

(a) the Energy Independence and Security Act of 2007, Public Law 110-140, and subsequent acts;

(b) the Safe Drinking Water Act, 42 U.S.C. 300f, et seq.; and

(c) the underground injection control program, 40 CFR, parts 144-147.

(3) The board shall periodically update rules to provide consistency between the rules promulgated under this section and any regulations promulgated for the regulation of geologic carbon sequestration by the United States environmental protection agency.

NEW SECTION. **Section 4. Carbon sequestration permit requirements -- appeal procedure.** (1) A person may not construct or use a carbon sequestration well or convert a well to a carbon sequestration well without a permit issued by the department pursuant to [sections 1 through 9].

(2) When the department approves or denies the application for a permit under this section, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision. An affidavit setting forth the grounds for the request must be filed within 30 days after the department renders its decision. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

(3) (a) The department's decision on the application is not final until 15 days have elapsed from the date of the decision.

(b) The filing of a request for a hearing does not stay the department's decision. However, the board may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:

(i) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or

(ii) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the stay.

(c) Upon granting a stay, the board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on injunctions.

NEW SECTION. **Section 5. Requirements for other wells in geologic sequestration sites.** A person may not drill a well that is not a carbon sequestration well into or through a geologic sequestration site or use or

plug a well drilled into a geologic sequestration site unless the well is drilled, maintained, and, upon discontinuation of use, plugged in accordance with rules adopted pursuant to [section 3].

NEW SECTION. **Section 6. Enforcement -- notice -- order for corrective action -- administrative penalty.** (1) When the department believes that a violation of [sections 1 through 9], a rule adopted under [sections 1 through 9], or a condition or limitation imposed by a permit issued pursuant to [sections 1 through 9] has occurred, it may cause written notice to be served personally or by certified mail on the alleged violator or the violator's agent. The notice must specify the provision of [sections 1 through 9], the rule, or the permit condition or limitation alleged to be violated and the facts alleged to constitute a violation. The notice may include an order to take necessary corrective action within a reasonable period of time stated in the order or an order to pay an administrative penalty, or both. The order becomes final unless, within 30 days after the notice is received, the person named requests in writing a hearing before the board. On receipt of the request, the board shall schedule a hearing.

(2) If, after a hearing held under subsection (1), the board finds that a violation has occurred, it shall issue an appropriate order for the taking of corrective action or assess an administrative penalty, or both. As appropriate, an order issued as part of a notice or after a hearing may prescribe the date by which the violation must cease, time limits for particular action in correcting the violation, or the date by which the administrative penalty must be paid. If, after a hearing on an order contained in a notice, the board finds that a violation has not occurred, it shall rescind the order.

(3) (a) An action initiated under this section may include an administrative penalty of not less than $75 or more than $10,000 for each day of each violation. If an order issued by the department or board under this section requires the payment of an administrative penalty, the department or board shall state findings and conclusions describing the basis for its penalty assessment.

(b) Penalties imposed by an administrative order under this section may not be assessed for any day of violation that occurred more than 2 years prior to the issuance of the initial notice and order by the department under subsection (1).

(c) In determining the amount of penalty to be assessed for an alleged violation under this section, the department or board, as appropriate, shall consider the penalty factors in 75-1-1001.

(d) The department may bring a judicial action to enforce a final administrative order issued pursuant to this section. The action must be filed in the district court of the county in which the violation occurred or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark

County.

(4) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing conducted under this section.

(5) This section does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

NEW SECTION. **Section 7. Fees and penalties.** Any fees or penalties collected pursuant to [section 6] or rules adopted under [section 3] must be deposited in an account in the state special revenue fund provided for in 17-2-102 for use by the department of environmental quality to administer [sections 1 through 9].

NEW SECTION. **Section 8. Coordination with board of oil and gas conservation.** (1) A well regulated under Title 82, chapter 11, in which carbon dioxide is injected for the purpose of enhancing the recovery of oil and gas may be converted to a carbon dioxide sequestration well under a permit issued pursuant to [sections 1 through 9].

(2) The board shall coordinate the development of rules with the board of oil and gas conservation with regard to the conversion of wells referred to in subsection (1) to carbon dioxide sequestration wells.

(3) Wells converted to carbon dioxide sequestration wells pursuant to this section are subject to rules adopted under [section 3].

NEW SECTION. **Section 9. Notice of application for permit.** The department shall provide notice of an application for a permit pursuant to [section 4]. The notice must be:

(1) published in a newspaper of general circulation in each county where the geologic sequestration site is located; and

(2) mailed to all surface owners, mineral claimants, mineral owners, lessees, and other owners of record of subsurface interests that are located within 1 mile of the proposed boundary of the geologic sequestration site.

NEW SECTION. **Section 10. Mineral activities and ownership at geologic sequestration sites -- definition.**(1) [Sections 10 through 13] may not be considered to affect the lawful right of a surface or mineral owner to drill or bore through a geologic sequestration site if done in accordance with the rules established pursuant to [sections 1 through 9].

(2) (a) For the purposes of [sections 10 through 13], "pore space" means subsurface space of any size,

whether vacant or filled, that can be used as storage space for carbon dioxide, compressed air, or other substances injected into the space for storage.

(b) It does not include any pore space that on [the effective date of this section] has been utilized as a natural gas storage reservoir or which is known to contain natural gas or other gaseous or liquid materials in amounts sufficient to be economically retrievable in relation to the cost of exploring for, producing, and transporting that natural gas or gaseous or liquid mineral to the nearest point of sale.

NEW SECTION. **Section 11. State ownership of pore space.** (1) Under the public trust doctrine, the state of Montana owns the exclusive right to use all pore space in all strata below the surface of this state, with the exception of lands owned by or under the jurisdiction of the United States or any federally recognized tribal government, and the state of Montana holds that easement in trust for the environmental benefit of the general public.

(2) A conveyance of the surface ownership of real property by the state of Montana does not result in a conveyance of the pore space in any strata below the surface of that real property.

(3) [Sections 10 through 13] do not prohibit a mineral owner or an owner's agent or lessee from exploring for, developing, or producing naturally occurring carbon dioxide on that mineral owner's property.

NEW SECTION. **Section 12. Dominance of mineral estate.** (1) [Sections 10 through 13] may not be construed to change or alter common law in accordance with 1-1-108 as it relates to the rights belonging to or the dominance of the mineral estate, including but not limited to the right to mine, drill, or recomplete a well, to inject substances to facilitate production, or to implement enhanced recovery, as defined in 82-11-101, for the purposes of recovery of oil, gas, or other minerals.

(2) If an underground reservoir is depleted of oil or gas or abandoned, it may be considered pore space in accordance with the provisions of [sections 10 through 13].

(3) The state of Montana and its lessee under [section 13] may negotiate with private land owners for leases authorizing the use of the surface of private lands and allowing access to state-owned pore space. The leases are subject to any conditions contained in a permit issued by the department of environmental quality pursuant to [sections 1 through 9].

NEW SECTION. **Section 13. Leasing of pore space rights -- board rulemaking.** (1) The board of land commissioners may lease the state's pore space rights after [the effective date of this section] or provide

an easement pursuant to [section 10(1)] provided that it gives notice of the lease to the department of environmental quality. The leases must contain:

(a) a detailed description of the subsurface stratum or strata involved in the transfer;

(b) a legal description of the boundaries of the surface lying over the transferred pore space; and

(c) a list of the existing lessees, rights, or interests on the property, including mineral interests and any other rights attached to the surface lying over the transferred pore space.

(2) The board shall give notice of an application for a lease of state pore space to the department of environmental quality, affected surface owners, mineral claimants, mineral owners, mineral lessees, and other owners of record of subsurface interests at a geologic sequestration site.

(3) Pursuant to board rules, the board may issue licenses for any secondary use, including the use of pore space rights, of state land other than its primary classification when the use is compatible with the board's multiple use objective.

(4) (a) At the time of injection, carbon dioxide injected pursuant to this section is and remains the property of the state of Montana, unless and until transferred to and accepted by another person.

(b) The leasing of pore space pursuant to subsection (1) does not constitute transfer or acceptance of the carbon dioxide.

Section 14. Section 70-16-101, MCA, is amended to read:

"70-16-101. Rights of owner in fee -- above and below surface. ~~The~~ Except as provided in [sections 10 through 13], the owner of land in fee has the right to the surface and to everything permanently situated beneath or above it."

Section 15. Section 75-1-1001, MCA, is amended to read:

"75-1-1001. Penalty factors. (1) In determining the amount of an administrative or civil penalty to which subsection (4) applies, the department of environmental quality or the district court, as appropriate, shall take into account the following factors:

(a) the nature, extent, and gravity of the violation;

(b) the circumstances of the violation;

(c) the violator's prior history of any violation, which:

(i) must be a violation of a requirement under the authority of the same chapter and part as the violation for which the penalty is being assessed;

(ii) must be documented in an administrative order or a judicial order or judgment issued within 3 years prior to the date of the occurrence of the violation for which the penalty is being assessed; and

(iii) may not, at the time that the penalty is being assessed, be undergoing or subject to administrative appeal or judicial review;

(d) the economic benefit or savings resulting from the violator's action;

(e) the violator's good faith and cooperation;

(f) the amounts voluntarily expended by the violator, beyond what is required by law or order, to address or mitigate the violation or impacts of the violation; and

(g) other matters that justice may require.

(2) After the amount of a penalty is determined under subsection (1), the department of environmental quality or the district court, as appropriate, may consider the violator's financial ability to pay the penalty and may institute a payment schedule or suspend all or a portion of the penalty.

(3) The department of environmental quality may accept a supplemental environmental project as mitigation for a portion of the penalty. For purposes of this section, a "supplemental environmental project" is an environmentally beneficial project that a violator agrees to undertake in settlement of an enforcement action but which the violator is not otherwise legally required to perform.

(4) This section applies to penalties assessed by the department of environmental quality or the district court under Title 75, chapters 2, 5, 6, 11, and 20; Title 75, chapter 10, parts 2, 4, 5, and 12; [sections 1 through 9]; and Title 76, chapter 4.

(5) The board of environmental review and the department of environmental quality may, for the statutes listed in subsection (4) for which each has rulemaking authority, adopt rules to implement this section."

Section 16. Section 75-5-103, MCA, is amended to read:

"75-5-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502.

(2) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

(3) "Council" means the water pollution control advisory council provided for in 2-15-2107.

(4) (a) "Currently available data" means data that is readily available to the department at the time a decision is made, including information supporting its previous lists of water bodies that are threatened or

impaired.

(b) The term does not mean new data to be obtained as a result of department efforts.

(5) "Degradation" means a change in water quality that lowers the quality of high-quality waters for a parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c).

(6) "Department" means the department of environmental quality provided for in 2-15-3501.

(7) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

(8) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents that are discharged into state waters.

(9) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether or not those uses are included in the water quality standards.

(10) "High-quality waters" means all state waters, except:

(a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by the board's classification rules; and

(b) surface waters that:

(i) are not capable of supporting any one of the designated uses for their classification; or

(ii) have zero flow or surface expression for more than 270 days during most years.

(11) "Impaired water body" means a water body or stream segment for which sufficient credible data shows that the water body or stream segment is failing to achieve compliance with applicable water quality standards.

(12) "Industrial waste" means a waste substance from the process of business or industry or from the development of any natural resource, together with any sewage that may be present.

(13) "Interested person" means a person who has a real property interest, a water right, or an economic interest that is or may be directly and adversely affected by the department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested authorization to degrade high-quality waters.

(14) "Load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future nonpoint sources or to natural background sources.

(15) "Loading capacity" means the mass of a pollutant that a water body can assimilate without a violation of water quality standards. For pollutants that cannot be measured in terms of mass, it means the maximum

change that can occur from the best practicable condition in a surface water without causing a violation of the surface water quality standards.

(16) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

(17) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium, barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver, thallium, and zinc.

(18) "Mixing zone" means an area established in a permit or final decision on nondegradation issued by the department where water quality standards may be exceeded, subject to conditions that are imposed by the department and that are consistent with the rules adopted by the board.

(19) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

(20) "Outstanding resource waters" means:

(a) state surface waters located wholly within the boundaries of areas designated as national parks or national wilderness areas as of October 1, 1995; or

(b) other surface waters or ground waters classified by the board under the provisions of 75-5-316 and approved by the legislature.

(21) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.

(22) "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

(23) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

(24) "Point source" means a discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

(25) (a) "Pollution" means:

(i) contamination or other alteration of the physical, chemical, or biological properties of state waters that exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or

(ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other

substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife.

(b) A discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge permit rules of the board is not pollution under this chapter. Activities conducted under the conditions imposed by the department in short-term authorizations pursuant to 75-5-308 are not considered pollution under this chapter.

(c) Contamination of ground water within a geologic sequestration site, as defined in [section 2], by a carbon dioxide sequestration well in accordance with a permit issued under [sections 1 through 9] is not pollution and does not require a mixing zone.

(26) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present.

(27) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

(28) "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, when practicable, a standard permitting no discharge of pollutants.

(29) (a) "State waters" means a body of water, irrigation system, or drainage system, either surface or underground.

(b) The term does not apply to:

(i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

(ii) irrigation waters or land application disposal waters when the waters are used up within the irrigation or land application disposal system and the waters are not returned to state waters.

(30) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in combination with narrative information, that supports a finding as to whether a water body is achieving compliance with applicable water quality standards.

(31) "Threatened water body" means a water body or stream segment for which sufficient credible data and calculated increases in loads show that the water body or stream segment is fully supporting its designated uses but threatened for a particular designated use because of:

(a) proposed sources that are not subject to pollution prevention or control actions required by a

discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or

(b) documented adverse pollution trends.

(32) "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations for point sources and load allocations for both nonpoint sources and natural background sources established at a level necessary to achieve compliance with applicable surface water quality standards.

(33) "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.

(34) "Waste load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources.

(35) "Water quality protection practices" means those activities, prohibitions, maintenance procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve the quality of state waters. Water quality protection practices include but are not limited to treatment requirements, standards of performance, effluent standards, and operating procedures and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

(36) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

(37) "Watershed advisory group" means a group of individuals who wish to participate in an advisory capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the development of TMDLs under 75-5-703, including those groups or individuals requested by the department to participate in an advisory capacity as provided in 75-5-704."

Section 17. Section 75-5-401, MCA, is amended to read:

"75-5-401. Board rules for permits -- ground water exclusions. (1) Except as provided in subsection (5), the board shall adopt rules:

(a) governing application for permits to discharge sewage, industrial wastes, or other wastes into state waters, including rules requiring the filing of plans and specifications relating to the construction, modification, or operation of disposal systems;

(b) governing the issuance, denial, modification, or revocation of permits. The board may not require a permit for a water conveyance structure or for a natural spring if the water discharged to state waters does not contain industrial waste, sewage, or other wastes. Discharge to surface water of ground water that is not altered from its ambient quality does not constitute a discharge requiring a permit under this part if:

(i) the discharge does not contain industrial waste, sewage, or other wastes;

(ii) the water discharged does not cause the receiving waters to exceed applicable standards for any parameters; and

(iii) to the extent that the receiving waters in their ambient state exceed standards for any parameters, the discharge does not increase the concentration of the parameters.

(c) governing authorization to discharge under a general permit for storm water associated with construction activity. These rules must allow an owner or operator to notify the department of the intent to be covered under the general permit. This notice of intent must include a signed pollution prevention plan that requires the applicant to implement best management practices in accordance with the general permit. The rules must authorize the owner or operator to discharge under the general permit on receipt of the notice and plan by the department.

(2) The rules must allow the issuance or continuance of a permit only if the department finds that operation consistent with the limitations of the permit will not result in pollution of any state waters, except that the rules may allow the issuance of a temporary permit under which pollution may result if the department ensures that the permit contains a compliance schedule designed to meet all applicable effluent standards and water quality standards in the shortest reasonable period of time.

(3) The rules must provide that the department may revoke a permit if the department finds that the holder of the permit has violated its terms, unless the department also finds that the violation was accidental and unforeseeable and that the holder of the permit corrected the condition resulting in the violation as soon as was reasonably possible.

(4) The board may adopt rules governing reclamation of sites disturbed by construction, modification, or operation of permitted activities for which a bond is voluntarily filed by a permittee pursuant to 75-5-405, including rules for the establishment of criteria and procedures governing release of the bond or other surety and release of portions of a bond or other surety.

(5) Discharges of sewage, industrial wastes, or other wastes into state ground waters from the following activities or operations are not subject to the ground water permit requirements adopted under subsections (1) through (4):

(a) discharges or activities at wells injecting fluids associated with oil and gas exploration and production regulated under the federal underground injection control program;

(b) disposal by solid waste management systems licensed pursuant to 75-10-221;

(c) individuals disposing of their own normal household wastes on their own property;

(d) hazardous waste management facilities permitted pursuant to 75-10-406;

(e) water injection wells, reserve pits, and produced water pits used in oil and gas field operations and approved pursuant to Title 82, chapter 11;

(f) agricultural irrigation facilities;

(g) storm water disposal or storm water detention facilities;

(h) subsurface disposal systems for sanitary wastes serving individual residences;

(i) in situ mining of uranium facilities controlled under Title 82, chapter 4, part 2;

(j) mining operations subject to operating permits or exploration licenses in compliance with The Strip and Underground Mine Reclamation Act, Title 82, chapter 4, part 2, or the metal mine reclamation laws, Title 82, chapter 4, part 3; ~~or~~

(k) projects reviewed under the provisions of the Montana Major Facility Siting Act, Title 75, chapter 20; or

(l) a carbon dioxide sequestration well for which a permit has been issued pursuant to [sections 1 through 9].

(6) Notwithstanding the provisions of 75-5-301(4), mixing zones for activities excluded from permit requirements under subsection (5) of this section must be established by the permitting agency for those activities in accordance with 75-5-301(4)(a) through (4)(c).

(7) Notwithstanding the exclusions set forth in subsection (5), any excluded source that the department determines may be causing or is likely to cause violations of ground water quality standards may be required to submit monitoring information pursuant to 75-5-602.

(8) The board may adopt rules identifying other activities or operations from which a discharge of sewage, industrial wastes, or other wastes into state ground waters is not subject to the ground water permit requirements adopted under subsections (1) through (4).

(9) The board may adopt rules authorizing general permits for categories of point source discharges. The rules may authorize discharge upon issuance of an individual authorization by the department or upon receipt of a notice of intent to be covered under the general permit."

Section 18. Section 77-2-304, MCA, is amended to read:

"77-2-304. Mineral reservations in state land. All pore space pursuant to [section 11], coal, oil, oil shale, gas, phosphate, sodium, and other mineral deposits in state land, except sand, gravel, building stone, and brick clay, which were not reserved by the United States before July 1, 1927, are reserved to the state. Subject

to 17-6-340, those deposits are reserved from sale except upon a rental and royalty basis as provided by law. A purchaser of state land acquires no right, title, or interest in or to any of those deposits or pore space. The state also reserves for itself and its lessees the right to enter upon state land to prospect for, develop, mine, and remove mineral deposits or to use pore space and to occupy and use so much of the surface of the land as may be required for all purposes reasonably extending to the exploring for, mining, and removal of the deposits from the land or the use of the pore space, but the lessee shall make just payment to the purchaser for all damage done by reason of entry upon the land and the use and occupancy of the surface of the land."

NEW SECTION. **Section 19. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

NEW SECTION. **Section 20. Codification instruction.** (1) [Sections 1 through 9] are intended to be codified as an integral part of Title 75, and the provisions of Title 75 apply to [sections 1 through 9].

(2) [Sections 10 through 12] are intended to be codified as an integral part of Title 70, and the provisions of Title 70 apply to [sections 10 through 12].

(3) [Section 13] is intended to be codified as an integral part of Title 77, and the provisions of Title 77 apply to [section 13].

NEW SECTION. **Section 21. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 22. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 23. Transition -- contingent implementation.** If the United States environmental protection agency adopts regulations allowing states to apply for primacy over carbon dioxide sequestration wells under the federal underground injection control program adopted by the environmental protection agency, the department of environmental quality shall in consultation with the board of oil and gas conservation and the department of natural resources and conservation develop draft rules to implement [sections

1 through 9] for submission to the board of environmental review and, upon adoption, seek primacy.

NEW SECTION. **Section 24. Effective dates -- contingency.** (1) [Sections 1 through 9] and [sections 15 through 17] are effective on the date that the department of environmental quality is granted primacy to administer activities at carbon dioxide sequestration wells by the United States environmental protection agency.

(2) [Sections 10 through 14 and 18 through 22 and this section] are effective on passage and approval.

(3) The department of environmental quality shall provide a copy of the grant of primacy provided for in subsection (1) to the code commissioner.

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