SENATE BILL NO. 498

INTRODUCED BY BALES, ESSMANN, STORY, KEANE

A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING CARBON SEQUESTRATION; REQUIRING A PERMIT FOR A CARBON DIOXIDE INJECTION WELL; AUTHORIZING THE BOARD OF OIL AND GAS CONSERVATION TO REGULATE THE INJECTION OF CARBON DIOXIDE; AFFIRMING THE DOMINANCE OF A MINERAL ESTATE; ESTABLISHING FEES FOR ADMINISTERING A CARBON SEQUESTRATION PROGRAM AND LONG-TERM OVERSIGHT OF WELLS; REQUIRING NOTICE OF CARBON DIOXIDE INJECTION WELLS; REQUIRING THE BOARD TO SOLICIT AND CONSIDER COMMENTS FROM THE DEPARTMENT OF ENVIRONMENTAL QUALITY PRIOR TO ISSUING AN INJECTION PERMIT AND PRIOR TO ISSUING A CERTIFICATE OF COMPLETION; REQUIRING THE BOARD TO SOLICIT AND CONSIDER COMMENTS FROM THE DEPARTMENT OF ENVIRONMENTAL QUALITY PRIOR TO TRANSFERRING LIABILITY TO THE STATE; REQUIRING TESTING AFTER ISSUANCE OF A CERTIFICATE OF COMPLETION AND PRIOR TO TRANSFER OF LIABILITY; ALLOWING FOR THE TRANSFER OF TITLE TO SEQUESTERED CARBON DIOXIDE TO THE STATE AFTER BOARD CERTIFICATION; ALLOWING UNITIZATION FOR GEOLOGIC STORAGE RESERVOIRS; EXEMPTING A CARBON DIOXIDE INJECTION WELL FROM GROUND WATER PERMIT REQUIREMENTS; AMENDING SECTIONS 70-30-105, 75-5-103, 75-5-401, 77-3-430, 82-10-402, 82-11-101, 82-11-104, 82-11-111, 82-11-118, 82-11-122, 82-11-123, 82-11-127, 82-11-136, 82-11-137, 82-11-161, 82-11-163, 82-11-201, 82-11-204, 82-11-205, AND 82-11-214, MCA; AND PROVIDING EFFECTIVE DATES."

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

~~NEW SECTION.~~ **Section 1. Legislative findings.** ~~The legislature finds that:~~

~~(1) the geologic storage of carbon dioxide, a potentially valuable commodity, may allow for its commercial, industrial, or other use, including enhanced recovery of oil, gas, and other minerals; and~~

~~(2) to be practical and effective, geologic carbon sequestration benefits from the cooperative use of surface and subsurface property interests and the collaboration of property owners, but obtaining consent from all owners may not be feasible, requiring procedures that promote, in a manner fair to all interests, cooperative management.~~

NEW SECTION. **Section 1. Preservation of property rights.** (1) Title 82, chapter 11, parts 1 and 2, and the issuance of a permit for a carbon dioxide injection well pursuant to Title 82, chapter 11, parts 1 and 2, do not:

(a) prejudice the rights of property owners within a geologic storage reservoir to exercise rights that have not been committed to a storage reservoir; or

(b) prevent a mineral owner or mineral lessee from drilling through or near a storage reservoir to explore for and develop minerals, provided that the drilling, production, and related activities comply with board requirements that preserve the storage reservoir's integrity and implement Title 82, chapter 11, parts 1 and 2.

(2) Title 82, chapter 11, parts 1 and 2, may not be construed to:

(a) 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 for the purposes of recovery of oil, gas, or other minerals; ~~or~~

(b) impede or impair the ability of an oil and gas operator to inject carbon dioxide for enhanced recovery or to establish, verify, register, and sell emission reduction credits or attributes associated with the project;

(C) CHANGE OR ALTER COMMON LAW OR STATUTORY PROVISIONS REGARDING THE OWNERSHIP OF SURFACE OR SUBSURFACE RIGHTS; ~~OR~~

(D) DIMINISH, IMPAIR, OR IN ANY WAY AFFECT THE RIGHTS OF A NATURAL GAS PUBLIC UTILITY, AS DEFINED IN 82-10-301, TO OWN, OPERATE, OR CONTROL A GAS STORAGE RESERVOIR IN USE PRIOR TO [THE EFFECTIVE DATE OF THIS SECTION]; OR

(E) APPLY WITHIN THE EXTERIOR BOUNDARIES OF ANY FEDERALLY RECOGNIZED INDIAN RESERVATION WITHIN THE STATE OF MONTANA UNLESS THE GOVERNING BODY OF THE TRIBE ADOPTS A CARBON SEQUESTRATION LAW AND ENTERS INTO A COOPERATIVE AGREEMENT WITH THE STATE.

(3) IF THE OWNERSHIP OF THE GEOLOGIC STORAGE RESERVOIR CANNOT BE DETERMINED FROM THE DEEDS OR SEVERANCE DOCUMENTS RELATED TO THE PROPERTY BY REVIEWING STATUTORY OR COMMON LAW, IT IS PRESUMED THAT THE SURFACE OWNER OWNS THE GEOLOGIC STORAGE RESERVOIR.

NEW SECTION. **Section 2. Geologic storage reservoir administrative fee -- account established.** (1) (a) A geologic storage operator shall pay to the board a fee on each ton of carbon dioxide injected for storage

for the purpose of carrying out the state's responsibility to monitor and manage geologic storage reservoirs. If ~~prior to being issued a certificate of completion,~~ a geologic storage operator chooses to INDEFINITELY accept liability pursuant to ~~[section 5(4)(f)]~~ [SECTION 4(9)(A)], the board shall remit the fee to the operator. IF A GEOLOGIC STORAGE OPERATOR IS REQUIRED TO MAINTAIN LIABILITY PURSUANT TO [SECTION 4(9)(B)], THE BOARD MAY NOT REMIT THE FEE.

(b) The fee must be in the amount set by board rule.

(c) The amount must be based on the anticipated actual expenses that the board will incur in monitoring and managing geologic storage reservoirs during their postclosure phases.

(2) There is a geologic storage reservoir program account in the special revenue fund.

(3) (a) Each fiscal year there must be deposited in the account the fees collected pursuant to [SECTION 5(2)(B)] AND subsection (1) OF THIS SECTION, to be used by the board for monitoring and managing ~~a~~ geologic storage ~~reservoir that is the state's responsibility pursuant to [section 5(5)]~~ RESERVOIRS PURSUANT TO [SECTION 4(6) AND (8)]~~, to reclaim abandoned wells pursuant to 82-10-402(5), and to plug abandoned wells pursuant to 82-11-136(2)~~.

(b) Funds received from bonds or other surety as authorized in 82-11-123(1)(f) and ~~[section 5]~~ [SECTION 4] must be deposited in the account.

(4) Interest and earnings on the funds in the geologic storage reservoir program account accrue to that account.

NEW SECTION. **Section 3. Liability for carbon dioxide during injection.** (1) Until the certificate of project completion is issued PURSUANT TO [SECTION 4(1)] and title to the STORED carbon dioxide and geologic storage reservoir is transferred to the state pursuant to ~~[section 5(5)] or the operator accepts liability pursuant to [section 5(4)(f)]~~ [SECTION ~~4(7)~~ 4(8)], the geologic storage operator is liable for the operation and management of the carbon dioxide injection well, the geologic storage reservoir, and the INJECTED OR STORED carbon dioxide ~~contained in the reservoir~~.

(2) Bond or other surety furnished pursuant to 82-11-123(1)(f) must be adequate to meet the requirements of subsection (1).

(3) FOR THE PURPOSES OF [SECTION 4] AND THIS SECTION, "TITLE" INCLUDES TITLE TO THE GEOLOGIC STORAGE RESERVOIR AND THE STORED CARBON DIOXIDE.

~~NEW SECTION.~~ **~~Section 5. Certificate of project completion -- transfer of liability.~~** ~~(1) Pursuant to subsection (3), after carbon dioxide injections into a reservoir end and upon meeting the certification requirements pursuant to subsection (4), the board shall issue the geologic storage operator a certificate of project completion.~~

~~(2) The board may adopt rules pursuant to 82-11-111 necessary for implementing subsection (4), including:~~

~~(a) rules for public notice and hearing; and~~

~~(b) any other rules necessary for administration of this section.~~

~~(3) The certificate may not be issued until at least 10 years after carbon dioxide injections end.~~

~~(4) The certificate may be issued only if the geologic storage operator:~~

~~(a) is in full compliance with regulations governing the geologic storage reservoir pursuant to this part;~~

~~(b) shows that the geologic storage reservoir is reasonably expected to retain the carbon dioxide stored in it;~~

~~(c) shows that all wells, equipment, and facilities to be used in the postclosure period are in good condition and retain mechanical integrity;~~

~~(d) shows that it has plugged wells, removed equipment and facilities, and completed reclamation work as required by the board;~~

~~(e) shows that the carbon dioxide in the geologic storage reservoir has become stable, which means that it is essentially stationary or, if it is migrating or may migrate, that any migration will be unlikely to cross the geologic storage reservoir boundary; and~~

~~(f) shows that the geologic storage operator will provide adequate bond or other surety following closure of the well or wells and that the operator indefinitely accepts liability, except as provided in subsection (6), for the stored carbon dioxide unless the operator chooses to transfer title to the geologic storage reservoir and the stored carbon dioxide to the state pursuant to subsection (5).~~

~~(5) If the geologic storage operator chooses to transfer title to the geologic storage reservoir and to the stored carbon dioxide to the state, after the board issues a certificate:~~

~~(a) title is transferred, without payment or any compensation, to the state;~~

~~(b) title acquired by the state includes all rights and interests in and all responsibilities associated with the stored carbon dioxide;~~

~~(c) the geologic storage operator and all persons who generated any injected carbon dioxide are released from all regulatory requirements and liability associated with the geologic storage reservoir;~~

~~(d) any bonds or other surety posted by the geologic storage operator must be released; and~~

~~(e) monitoring and managing the geologic storage reservoir is the state's responsibility to be overseen by the board until the federal government assumes responsibility for the long-term monitoring and management of geologic storage reservoirs.~~

~~(6) Every 10 years after being issued a certificate of project completion pursuant to subsection (1), an operator who accepts liability pursuant to subsection (4)(f) may petition the board and request to transfer liability to the state and be released from liability pursuant to subsection (5).~~

NEW SECTION. **SECTION 4. CERTIFICATE OF COMPLETION -- DEPARTMENT OF ENVIRONMENTAL QUALITY PARTICIPATION -- TRANSFER OF LIABILITY.** (1) PURSUANT TO SUBSECTION (3), AFTER CARBON DIOXIDE INJECTIONS INTO A RESERVOIR END AND UPON COMPLETION OF THE CERTIFICATION REQUIREMENTS PURSUANT TO SUBSECTIONS (4) AND (5), THE BOARD SHALL ISSUE THE GEOLOGIC STORAGE OPERATOR A CERTIFICATE OF PROJECT COMPLETION.

(2) THE BOARD ~~MAY~~:

(A) SHALL ADOPT RULES PURSUANT TO 82-11-111 NECESSARY FOR IMPLEMENTING SUBSECTION (4) OF THIS SECTION, INCLUDING~~:~~

~~(A)~~ RULES FOR PUBLIC NOTICE AND HEARING; AND

(B) MAY, PURSUANT TO 82-11-111, ADOPT ANY OTHER RULES NECESSARY FOR ADMINISTRATION OF THIS SECTION.

(3) THE CERTIFICATE MAY NOT BE ISSUED UNTIL AT LEAST ~~10~~ 15 YEARS AFTER CARBON DIOXIDE INJECTIONS END.

(4) SUBJECT TO SUBSECTION (5), THE CERTIFICATE MAY BE ISSUED ONLY IF THE GEOLOGIC STORAGE OPERATOR:

(A) IS IN FULL COMPLIANCE WITH REGULATIONS GOVERNING THE GEOLOGIC STORAGE RESERVOIR PURSUANT TO THIS PART;

(B) SHOWS THAT THE GEOLOGIC STORAGE RESERVOIR ~~IS REASONABLY EXPECTED TO~~ WILL RETAIN THE CARBON DIOXIDE STORED IN IT;

(C) SHOWS THAT ALL WELLS, EQUIPMENT, AND FACILITIES TO BE USED IN THE POSTCLOSURE PERIOD ARE IN GOOD CONDITION AND RETAIN MECHANICAL INTEGRITY;

(D) SHOWS THAT IT HAS PLUGGED WELLS, REMOVED EQUIPMENT AND FACILITIES, AND COMPLETED RECLAMATION WORK AS REQUIRED BY THE BOARD;

(E) SHOWS THAT THE CARBON DIOXIDE IN THE GEOLOGIC STORAGE RESERVOIR HAS BECOME STABLE, WHICH MEANS THAT IT IS ESSENTIALLY STATIONARY OR CHEMICALLY COMBINED OR, IF IT IS MIGRATING OR MAY MIGRATE, THAT

ANY MIGRATION WILL ~~BE UNLIKELY TO~~ NOT CROSS THE GEOLOGIC STORAGE RESERVOIR BOUNDARY; AND

(F) SHOWS THAT THE GEOLOGIC STORAGE OPERATOR WILL CONTINUE TO PROVIDE ADEQUATE BOND OR OTHER SURETY AFTER RECEIVING THE CERTIFICATE OF COMPLETION FOR AT LEAST ~~10~~ 15 YEARS FOLLOWING ISSUANCE OF THE CERTIFICATE OF COMPLETION AND THAT THE OPERATOR CONTINUES TO ACCEPT LIABILITY FOR THE GEOLOGIC STORAGE RESERVOIR AND THE STORED CARBON DIOXIDE.

(5) (A) PRIOR TO ISSUING A CERTIFICATE OF COMPLETION, THE BOARD SHALL SOLICIT, DOCUMENT, CONSIDER, AND ADDRESS COMMENTS FROM THE DEPARTMENT OF ENVIRONMENTAL QUALITY.

(B) NOTWITHSTANDING SUBSECTION (5)(A), THE BOARD MAKES THE FINAL DECISION ON ISSUANCE OF THE CERTIFICATE.

(6) AFTER ISSUING A CERTIFICATE OF COMPLETION, THE BOARD~~, IN CONJUNCTION WITH THE OPERATOR,~~ SHALL ~~MONITOR~~ ENSURE ADEQUATE MONITORING BY THE OPERATOR OF THE WELLS AND RESERVOIR, VERIFYING COMPLIANCE WITH SUBSECTION (4), FOR A PERIOD OF ~~10~~ 15 YEARS.

(7) (A) FOLLOWING THE MONITORING AND VERIFICATION REQUIRED IN SUBSECTION (6) AND SUBJECT TO SUBSECTIONS (7)(B) AND (7)(C), IF THE GEOLOGIC STORAGE OPERATOR HAS TITLE TO THE GEOLOGIC STORAGE RESERVOIR AND THE STORED CARBON DIOXIDE, THE GEOLOGIC STORAGE OPERATOR MAY TRANSFER TITLE TO THE GEOLOGIC STORAGE RESERVOIR AND TO THE STORED CARBON DIOXIDE TO THE STATE.

(B) PRIOR TO A TRANSFER OF TITLE, THE MONITORING PURSUANT TO SUBSECTION (6) MUST SHOW~~, TO THE SATISFACTION OF THE BOARD,~~ THAT:

(I) THE RESERVOIR AND WELLS ARE IN FULL COMPLIANCE WITH REGULATIONS PURSUANT TO THIS PART; AND

(II) THE RESERVOIR ~~IS REASONABLY EXPECTED TO~~ WILL MAINTAIN ITS STRUCTURAL INTEGRITY AND WILL NOT ALLOW CARBON DIOXIDE TO MOVE OUT OF ONE STRATUM INTO ANOTHER OR POLLUTE DRINKING WATER SUPPLIES.

(C) (I) PRIOR TO A TRANSFER OF TITLE, THE BOARD SHALL SOLICIT, DOCUMENT, CONSIDER, AND ADDRESS COMMENTS FROM THE DEPARTMENT OF ENVIRONMENTAL QUALITY.

~~(II) NOTWITHSTANDING SUBSECTION (7)(C)(I), THE BOARD MAKES THE FINAL DECISION ON THE TRANSFER OF TITLE.~~

(II) THE BOARD SHALL MAKE A RECOMMENDATION TO THE BOARD OF LAND COMMISSIONERS AS TO WHETHER TITLE SHOULD TRANSFER TO THE STATE.

(III) NOTWITHSTANDING SUBSECTIONS (7)(C)(I) AND (7)(C)(II), THE BOARD OF LAND COMMISSIONERS SHALL MAKE THE FINAL DECISION ON THE TRANSFER OF TITLE.

(8) IF LIABILITY IS TRANSFERRED PURSUANT TO SUBSECTION (7):

(A) TITLE IS TRANSFERRED, WITHOUT PAYMENT OR ANY COMPENSATION, TO THE STATE;

(B) TITLE ACQUIRED BY THE STATE INCLUDES ALL RIGHTS AND INTERESTS IN AND ALL RESPONSIBILITIES ASSOCIATED WITH THE GEOLOGIC STORAGE RESERVOIR AND THE STORED CARBON DIOXIDE;

(C) THE GEOLOGIC STORAGE OPERATOR AND ALL PERSONS WHO GENERATED ANY INJECTED CARBON DIOXIDE ARE RELEASED FROM ALL REGULATORY REQUIREMENTS AND LIABILITY ASSOCIATED WITH THE GEOLOGIC STORAGE RESERVOIR AND THE STORED CARBON DIOXIDE;

(D) ANY BONDS OR OTHER SURETY POSTED BY THE GEOLOGIC STORAGE OPERATOR MUST BE RELEASED; AND

(E) MONITORING AND MANAGING THE GEOLOGIC STORAGE RESERVOIR AND THE STORED CARBON DIOXIDE IS THE STATE'S RESPONSIBILITY TO BE OVERSEEN BY THE BOARD UNTIL THE FEDERAL GOVERNMENT ASSUMES RESPONSIBILITY FOR THE LONG-TERM MONITORING AND MANAGEMENT OF GEOLOGIC STORAGE RESERVOIRS AND STORED CARBON DIOXIDE.

(9) (A) IF THE OPERATOR DOES NOT TRANSFER TITLE TO THE STATE PURSUANT TO SUBSECTION (7), THE OPERATOR INDEFINITELY ACCEPTS LIABILITY, EXCEPT AS PROVIDED IN SUBSECTION (10), FOR THE STORED CARBON DIOXIDE AND THE GEOLOGIC STORAGE RESERVOIR.

(B) IF THE OPERATOR IS FOUND NOT TO BE IN COMPLIANCE WITH SUBSECTION (7)(B), THE OPERATOR RETAINS LIABILITY UNTIL THE OPERATOR IS ABLE TO MEET THE REQUIREMENTS.

(10) AFTER RECEIVING A CERTIFICATE OF COMPLETION, EVERY ~~10~~ 15 YEARS AFTER COMPLETING THE MONITORING AND VERIFICATION REQUIRED BY SUBSECTION (6), AN OPERATOR MAY PETITION THE BOARD AND REQUEST TO TRANSFER LIABILITY TO THE STATE AND BE RELEASED FROM LIABILITY PURSUANT TO SUBSECTION ~~(7)~~ (8). AN OPERATOR WHO PETITIONS THE BOARD PURSUANT TO THIS SUBSECTION (10) MAY NOT REQUEST THAT THE FEE REQUIRED BY [SECTION 2(1)] OR [SECTION 5(2)(B)] BE REMITTED.

NEW SECTION. **Section 5. Conversion of enhanced recovery wells.** (1) A well regulated under this chapter in which carbon dioxide is injected for the purpose of enhancing the recovery of oil and gas may be converted to a carbon dioxide injection well.

(2) (A) The board shall develop rules with regard to the conversion of wells referred to in subsection (1) to carbon dioxide injection wells. THE RULES MUST BE IN ACCORDANCE WITH ALL APPLICATION, PERMITTING, AND REGULATORY REQUIREMENTS FOR CARBON DIOXIDE INJECTION WELLS PURSUANT TO THIS PART.

(B) THE RULES MUST INCLUDE PROVISIONS FOR A FEE TO BE PAID BY THE OWNER OF A CONVERTED WELL IN AN AMOUNT EQUIVALENT TO THE FEE REQUIRED TO BE PAID BY A GEOLOGIC STORAGE OPERATOR PURSUANT TO [SECTION 2(1)].

(3) Wells converted to carbon dioxide injection wells pursuant to this section are subject to carbon dioxide injection well and geologic storage reservoir regulations pursuant to this chapter, INCLUDING REQUIREMENTS FOR BONDING OR OTHER SURETY, THE ISSUANCE OF A CERTIFICATE OF COMPLETION, AND ACCEPTANCE OR TRANSFER OF LIABILITY.

NEW SECTION. **Section 6. Makoshika Park requirements.** (1) Except as provided in subsection (3), on lands managed as Makoshika state park pursuant to Title 23, chapter 1, and under the control of the department of fish, wildlife, and parks by grant, acquisition, lease, easement, or other means, a person may not:

(a) drill, construct, convert, or operate an oil or gas well, stratigraphic test well, or core hole;

(b) conduct vibroseis, drill a seismic shot hole, or set a surface charge;

(c) explore for oil or gas in a manner that damages the land surface; or

(d) construct or place any surface facility associated with oil or gas exploration or development.

(2) The prohibitions in subsection (1) do not preclude the development of geologic storage reservoirs or of oil or gas resources from beneath Makoshika state park through directional drilling or access from property outside the boundaries of the state park provided that the surface resources of the state park are not disturbed.

(3) The prohibitions listed in subsection (1) do not apply to geologic storage reservoirs or to oil or gas resources within Makoshika state park that are owned by a private person, nor do the prohibitions apply to school trust lands within the boundaries of the park. The state acknowledges the mineral rights of Dawson County and the state school trust and the private property rights of persons owning private mineral rights within Makoshika state park. The department of fish, wildlife, and parks is directed to conduct negotiations with the owners of mineral rights within Makoshika state park with the purpose of acquiring those rights in the name of the state.

Section 7. Section 70-30-105, MCA, is amended to read:

"70-30-105. Taking of underground natural gas storage reservoir -- effect on owner's right to drill. (1) The taking of any sand, stratum, or formation for use as an underground natural gas storage reservoir is without prejudice to the rights of the owner or owners of the land or of the oil, gas, or other mineral rights in the land to drill or bore through the sand, stratum, or formation taken for use as an underground natural gas storage reservoir in order to explore for, produce, process, treat, or market any oil, gas, or other minerals that might be contained in the land above or below the sand, stratum, or formation taken.

(2) Any additional cost or expense required to be incurred in order to protect the underground natural

gas storage reservoir against pollution and the escape of the gas from the reservoir by reason of boring or drilling through the sand, stratum, or formation used as an underground natural gas storage reservoir must be paid by the persons, firm, or corporation owning the underground natural gas storage reservoir at the time of the boring or drilling.

(3) After [the effective date of this section], if the sand, stratum, or formation is used as a geologic storage reservoir as defined in 82-11-101, it may not be taken for use as an underground natural gas storage reservoir."

SECTION 8. 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 THE BOUNDARIES OF a geologic storage reservoir, as defined in 82-11-101, by a carbon dioxide injection well in accordance with a permit issued pursuant to Title 82, chapter 11, part 1, 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 9. 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 injection well for which a permit has been issued pursuant to Title 82, chapter 11, part 1.

(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 10. SECTION 77-3-430, MCA, IS AMENDED TO READ:

"77-3-430. Pooling agreements and unit operations. Nothing contained in this or in prior related laws prevents the board from entering into agreements for the pooling of acreage with others for unit operations for the storage of carbon dioxide in a geologic storage reservoir or the production of oil or gas or both and the apportionment of oil or gas royalties or both on an acreage or other equitable basis and from modifying leases with respect to delay rentals, delay drilling penalties, and royalties in accordance with ~~such~~ pooling agreements and ~~such~~ unit plans of operation. However, ~~such~~ agreements may not change the percentage of royalties ~~to be~~ paid to the state from the percentages ~~as~~ fixed in its leases. The board may modify existing pooling and unit agreements ~~so as~~ to commit the state lands included ~~therein~~ in the pooling or unit agreements for as long as the unitized substance or substances for which the state lands are committed ~~is~~ are produced from any lands in the unit."

Section 11. Section 82-10-402, MCA, is amended to read:

"82-10-402. Inventory of abandoned wells and seismic operations -- reclamation procedures. (1) The board of oil and gas conservation shall maintain a record of the abandoned oil or gas wells, injection wells, sumps, and seismographic shot holes in the state that disturb land, water, or wildlife resources to a degree not in compliance with plugging, pollution prevention, and reclamation rules of the board. This record must be compiled from petitions or written statements from the owners of surface rights or lessees.

(2) The board shall check the record compiled under subsection (1) against its drilling records and shall determine and list the name of the person who abandoned the well, sump, or hole, whenever this information is available. When a person ~~so~~ listed applies to the board for a new drilling permit, the board may issue the permit only after approving a plan by which the applicant will reclaim the land disturbed by ~~his~~ the applicant's abandoned wells, sumps, or holes within 3 years.

(3) When the person who abandoned a well, sump, or hole cannot be identified or located or when the person does not have sufficient financial resources to pay for complete reclamation, the board may then reclaim the disturbed land with funds available from the oil and gas production damage mitigation account in a manner consistent with the requirements for the use of the account provided in 82-11-161 and 82-11-164.

(4) As used in subsection (3), "well" includes a class II injection well, as defined in 82-11-101, for which a drilling permit or a permit authorizing use of a well for that purpose was granted by the board after June 30, 1989, and water source wells used in connection with enhanced recovery projects.

(5) When the person who abandoned a carbon dioxide injection well, as defined in 82-11-101, cannot be identified or located to pay for complete reclamation, the board may then reclaim the disturbed land with funds available in the geologic storage reservoir program account."

Section 12. Section 82-11-101, MCA, is amended to read:

"82-11-101. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Administrator" means the administrator of the division of oil and gas conservation.

(2) "Board" means the board of oil and gas conservation provided for in 2-15-3303.

(3) "Carbon dioxide" means carbon dioxide produced by anthropogenic sources that is of such purity and quality that it will not compromise the safety of a geologic storage reservoir and will not compromise those

properties of a geologic storage reservoir that allow the reservoir to effectively enclose and contain a stored gas.

(4) (a) "Carbon dioxide injection well" means a well that injects ~~fluids~~ CARBON DIOXIDE for the underground storage of carbon dioxide in a geologic storage reservoir.

(b) The term does not include a class II injection well in which carbon dioxide is injected for the purpose of enhancing the recovery of oil and gas.

~~(3)~~(5) "Class II injection well" means a well, as defined by the federal environmental protection agency or any successor agency, that injects fluids:

(a) that have been brought to the surface in connection with oil or natural gas production;

(b) for purposes of enhancing the ultimate recovery of oil or natural gas; or

(c) for purposes of storing liquid hydrocarbons.

~~(4)~~(6) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

~~(5)~~(7) "Determinations" means those decisions delegated to the state by or under authority of the Natural Gas Policy Act of 1978 or any successor or similar legislation relating to oil and gas.

~~(6)~~(8) "Enhanced recovery" means the increased recovery from a pool achieved by artificial means or by the application of energy extrinsic to the pool; ~~such~~ artificial means or application includes pressuring, cycling, pressure maintenance, or injection into the pool of any substance or form of energy as is contemplated in secondary recovery and tertiary programs but does not include the injection in a well of a substance or form of energy for the sole purpose of aiding in the lifting of fluids in the well or stimulating of the reservoir at or near the well by mechanical, chemical, thermal, or explosive means.

~~(7)~~(9) "Field" means the general area underlaid by one or more pools.

~~(8)~~(10) "Fluid" means any material or substance that flows or moves, whether in a semisolid, liquid, sludge, gas, or any other form or state.

(11) "Geologic storage operator" means a person holding or applying for a carbon dioxide injection well permit.

(12) (A) "Geologic storage reservoir" means a subsurface sedimentary stratum, formation, aquifer, cavity, or void, whether natural or artificially created, including ~~oil and gas~~ VACANT OR FILLED reservoirs, saline formations, and coal seams suitable for or capable of being made suitable for injecting and storing carbon dioxide.

(B) THE TERM DOES NOT INCLUDE A NATURAL GAS STORAGE RESERVOIR. HOWEVER, THE OWNER OF A NATURAL GAS STORAGE RESERVOIR MAY CONVERT A DEPLETED NATURAL GAS STORAGE RESERVOIR INTO A GEOLOGIC STORAGE

RESERVOIR TO BE USED PURSUANT TO TITLE 82, CHAPTER 11, PARTS 1 AND 2.

~~(9)~~(13) "Owner" means the person who has the right to drill into and produce from a pool and to appropriate the oil or gas the person produces from a pool either for the person or others or for the person and others, and the term includes all persons holding that authority by or through the person with the right to drill.

~~(10)~~(14) "Person" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind and includes any agency or instrumentality of the state or any governmental subdivision of the state.

~~(11)~~(15) "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of any state waters that exceeds that permitted by state water quality standards or standards adopted by the board, including but not limited to the disposal, discharge, seepage, drainage, infiltration, flow, or injection of any liquid, gaseous, solid, or other substance into any state waters that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife. A disposal, discharge, seepage, drainage, infiltration, flow, or injection of fluid that is authorized under a rule, permit, or order of the board is not pollution under this chapter.

~~(12)~~(16) "Pool" means an underground reservoir containing a common accumulation of oil or gas or both~~;~~. ~~each~~ Each zone of a structure ~~which~~ that is completely separated from any other zone in the same structure is a pool~~, as that term is used in this chapter~~. For the purposes of unitization pursuant to Title 82, chapter 11, part 2, "pool" also includes an underground reservoir for the long-term storage of carbon dioxide after [the effective date of this section].

~~(13)~~(17) "Producer" means the owner of a well or wells capable of producing oil or gas or both.

~~(14)~~(18) "Responsible person" means a person who is determined by the board under 82-10-402 to have abandoned an oil or gas well, injection well, disposal well, water source well, drill site, sump, seismographic shot hole, or other area where oil and gas drilling and production operations were conducted.

~~(15)~~(19) "State waters" means any body of water, either surface or underground.

(20) "Verification and monitoring" means measuring the amount of carbon dioxide stored at a specific geologic storage reservoir, 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.

~~(16)~~(21) (a) "Waste" means:

(i) physical waste, as that term is generally understood in the oil and gas industry;

(ii) the inefficient, excessive, or improper use of or the unnecessary dissipation of reservoir energy;

(iii) the location, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner ~~which~~ that causes or tends to cause reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations or ~~which~~ that causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas; and

(iv) the inefficient storing of oil or gas.

(b) (i) ~~(~~The production of oil or gas from any pool or by any well to the full extent that the well or pool can be produced in accordance with methods designed to result in maximum ultimate recovery, as determined by the board, is not waste within the meaning of ~~this definition~~ subsection (21)(a).~~)~~

~~(b)~~(ii) The loss of gas to the atmosphere during coal mining operations is not waste within the meaning of ~~this definition~~ subsection (21)(a)."

Section 13. Section 82-11-104, MCA, is amended to read:

"82-11-104. Construction -- no conflict with board of land commissioners' authority. ~~No provision of this~~ This chapter may not be construed to conflict with 77-3-430, granting the board of land commissioners the authority to enter into pooling and unitization agreements for the storage of carbon dioxide in a geologic storage reservoir or the production of oil or gas with others, provided that state lands are subject to the provisions of this chapter concerning spacing and statutory pooling and unitization in the absence of voluntary pooling and unitization agreements."

Section 14. Section 82-11-111, MCA, is amended to read:

"82-11-111. Powers and duties of board. (1) The board shall ~~make such investigations as~~ investigate matters it considers proper to determine whether waste exists or is imminent or whether other facts exist which justify any action by the board under the authority granted by this chapter ~~with respect thereto~~.

(2) Subject to the administrative control of the department under 2-15-121, the board shall:

(a) require measures to be taken to prevent contamination of or damage to surrounding land or underground strata caused by drilling operations and production, including but not limited to regulating the disposal or injection of water, carbon dioxide, and disposal of oil field wastes;

(b) classify wells as oil or gas wells, carbon dioxide injection wells, or class II injection wells for purposes material to the interpretation or enforcement of this chapter;

(c) adopt and enforce rules and orders to effectuate the purposes and the intent of this chapter.

(3) The board shall determine and prescribe what producing wells ~~shall be~~ are defined as "stripper wells" and what wells ~~shall be~~ are defined as "wildcat wells" and make ~~such~~ orders ~~as~~ that in its judgment are required to protect those wells and provide that stripper wells may be produced to capacity if it is considered necessary in the interest of conservation to do so.

(4) With respect to any pool ~~from which gas was~~ with gas being produced by a gas well on or prior to April 1, 1953, this chapter does not authorize the board to limit or restrain the rate, ~~(~~daily or otherwise~~)~~, of production of gas from that pool by any well then or ~~thereafter~~ after April 1, 1953, drilled and producing from that pool to less than the rate at which the well can be produced without adversely affecting the quantity of gas ultimately recoverable by the well.

(5) ~~The~~ SUBJECT TO SUBSECTION (7), THE board has exclusive jurisdiction over carbon dioxide injection wells, geologic storage reservoirs, all class II injection wells, and all pits and ponds in relation to those injection wells. The board may:

(a) issue, suspend, revoke, modify, or deny permits to operate carbon dioxide injection wells and class II injection wells, consistent with rules made by it and pursuant to 82-11-123~~;~~. IF A PERMIT FOR A CARBON DIOXIDE INJECTION WELL IS REVOKED, AN OPERATOR MAY NOT SEEK A REFUND OF APPLICATION OR PERMITTING FEES OR FEES PAID PURSUANT TO [SECTION 2] OR [SECTION 5(2)(B)].

(b) examine plans and other information needed to determine whether a permit should be issued or require changes in plans as a condition to the issuance of a permit;

(c) clearly specify in a permit any limitations imposed as to the volume and characteristics of the fluids to be injected and the operation of the well;

(d) authorize its staff to enter upon any public or private property at reasonable times to:

(i) investigate conditions relating to violations of permit conditions;

(ii) have access to and copy records required under this chapter;

(iii) inspect monitoring equipment or methods; and

(iv) sample fluids which the operator or geologic storage operator is required to sample; and

(e) adopt standards for the design, construction, testing, and operation of carbon dioxide injection wells and class II injection wells.

(6) The board shall determine, for the purposes of using the oil and gas production damage mitigation account established in 82-11-161 or the geologic storage reservoir program account established in ~~[section 3]~~ [SECTION 2]:

(a) when the person responsible for an abandoned well, sump, or hole cannot be identified or located, or if the person is identified or located, when the person does not have sufficient financial resources to properly plug the well, sump, or hole; or

(b) when a previously abandoned well, sump, or hole is the cause of potential environmental problems and ~~no~~ a responsible party ~~can~~ cannot be identified or located or, if a responsible party can be identified and located, the person does not have sufficient financial resources to correct the problems.

(7) (A) Before holding a hearing on a proposed permit for a carbon dioxide injection well, the board ~~may~~ SHALL solicit, DOCUMENT, CONSIDER, AND ADDRESS comments from the department of environmental quality on the proposal.

(B) NOTWITHSTANDING SUBSECTION (7)(A), THE BOARD MAKES THE FINAL DECISION ON ISSUANCE OF A PERMIT.

(8) ~~For~~ SOLELY FOR the purposes of administering carbon dioxide injection wells UNDER THIS PART, carbon dioxide WITHIN A GEOLOGIC STORAGE RESERVOIR is not a pollutant, nuisance, or a hazardous or deleterious substance."

SECTION 15. SECTION 82-11-118, MCA, IS AMENDED TO READ:

"82-11-118. Fees for processing applications. (1) The board shall establish a fee schedule to defray the expenses incurred for processing an application from a geologic storage operator or an operator or producer of oil seeking approval of a new or expanded enhanced recovery project, as defined in 15-36-303. The fee must be paid by the owner, geologic storage operator, or operator seeking approval of the project.

(2) The board shall, by rule, determine the amount of the fee based on the complexity of processing the application."

Section 16. Section 82-11-122, MCA, is amended to read:

"82-11-122. Notice of intention to drill or conduct seismic operations -- notice to surface owner.

(1) It is unlawful to commence the drilling of a well for oil or gas without first filing with the board written notice of intention to drill and obtaining a drilling permit as provided in 82-11-134. After the permit is issued, an oil and gas developer or operator as defined under 82-10-502 shall comply with the notice requirements of 82-10-503 before commencing drilling operations. It is unlawful to conduct seismic explorations without first giving the board a copy of the notice of intention to explore filed with the county under 82-1-103.

(2) It is unlawful to commence the drilling of a carbon dioxide injection well without first filing with the board written notice of intention to drill and obtaining a drilling permit. Prior to issuing the permit, the board shall provide notice of an application for a permit. The notice must be:

(a) published in a newspaper of general circulation in each county where the carbon dioxide injection well and geologic storage reservoir is located; and

(b) 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 storage reservoir."

Section 17. Section 82-11-123, MCA, is amended to read:

"82-11-123. Requirements for oil and gas and carbon dioxide injection operations. (1) Subject to the administrative control of the department under 2-15-121, the board shall require:

~~(1)~~(a) identification of ownership of carbon dioxide injection wells, carbon dioxide, ~~carbon dioxide storage properties~~ GEOLOGIC STORAGE RESERVOIRS, and oil or gas wells, producing properties, and tanks;

~~(2)~~(b) the making and filing of acceptable well logs, including bottom-hole temperatures, ~~(~~in order to facilitate the discovery of potential geothermal energy sources~~)~~, the making and filing of reports on well locations, and the filing of directional surveys, geological sample logs, mud logs, core descriptions, and ordinary core analysis, if made~~;~~. ~~however~~ However, logs of exploratory or wildcat wells need not be filed for a period of 6 months following completion of those wells~~;~~.

~~(3)~~(c) the drilling, casing, producing, and plugging of wells, carbon dioxide injection wells, and class II injection wells in a manner that prevents the escape of carbon dioxide, oil, or gas out of one stratum into another, the intrusion of water into carbon dioxide, oil, or gas strata, blowouts, cave-ins, seepages, and fires and the pollution of fresh water supplies by carbon dioxide, oil, gas, salt, or brackish water;

~~(4)~~(d) the restoration of surface lands to their previous grade and productive capability after a well is plugged or a seismographic shot hole has been utilized and necessary measures to prevent adverse hydrological effects from the well or hole, unless the surface owner agrees in writing, with the approval of the board or its

representatives, to a different plan of restoration;

~~(5)~~(e) except as provided in subsection (1)(f), the furnishing of a reasonable bond with good and sufficient surety, conditioned for performance of the duty to properly plug each dry or abandoned well. The bond may be forfeited in its entirety by the board for failure to perform the duty to properly plug each dry or abandoned well and may not be canceled or absolved if the well fails to produce oil or gas in commercial quantities, until:

~~(a)~~(i) the board determines the well is properly plugged and abandoned as provided in the board's rules; or

~~(b)~~(ii) the requirements of 82-11-163 are met.

(f) the furnishing of reasonable bond or other surety for a carbon dioxide injection well, geologic storage reservoir, and the carbon dioxide stored in the reservoir with good and sufficient surety for performance of the duty to operate and manage a carbon dioxide injection well, geologic storage reservoir, and the carbon dioxide stored in the reservoir and to properly plug and reclaim each carbon dioxide injection well. The bond or other surety may be forfeited in its entirety by the board for failure to perform the duty to properly manage and operate a well, reservoir, and stored carbon dioxide or to plug a well. Except as provided in ~~[section 5(5)]~~ [SECTION ~~4(7)~~ 4(8)], the bond or other surety may not be canceled or absolved ~~and must be sufficient until the board issues a certificate of project completion~~.

~~(6)~~(g) proper gauging or other measuring of oil and gas produced and saved to determine the quantity and quality of oil and gas;

~~(7)~~(h) that every person who produces, transports, or stores oil or gas or injects or disposes of water or carbon dioxide in this state shall make available within this state for a period of 5 years complete and accurate records of the quantities. The records must be available for examination by the board or its employees at all reasonable times. The person shall file with the board reports as it may prescribe with respect to quantities, transportations, and storages of the oil, gas, carbon dioxide, or water.

~~(8)~~(i) the installation, use, and maintenance of monitoring equipment or methods in the operation of carbon dioxide injection wells and class II injection wells.

(2) In addition to the requirements of subsection (1), the geologic carbon dioxide injection well permitting system must include:

(a) recordkeeping and reporting requirements sufficient to measure the effectiveness of carbon dioxide injection wells and geologic storage reservoirs;

(b) 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;

(c) verification and monitoring at geologic storage reservoirs;

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

(E) ADEQUATE BASELINE MONITORING OF DRINKING WATER WELLS WITHIN 1 MILE OF THE PERIMETER OF THE GEOLOGIC STORAGE RESERVOIR; AND

~~(e)~~(F) at a minimum, requirements pursuant to applicable federal regulatory standards established by:

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

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

(iii) the underground injection control program, 40 CFR, parts 144 through 147."

Section 18. Section 82-11-127, MCA, is amended to read:

"82-11-127. Prohibited activity ~~-- Makoshika state park~~. (1) A person may not:

(a) cause pollution of any state waters or place or cause to be placed any liquid, gaseous, solid, or other substance in a location where the substance is likely to cause pollution of any state waters;

(b) violate any provision set forth in a permit or stipulation, including but not limited to limitations and conditions contained in it;

(c) violate an order issued pursuant to this chapter; or

(d) violate a provision of this chapter.

(2) A person may not drill, construct, convert, or operate a class II injection well or a carbon dioxide injection well or drill an oil or gas well or stratigraphic test well or core hole as described under 82-11-134 without a valid permit or order from the board.

~~(3) Except as provided in subsection (5), on lands managed as Makoshika state park, pursuant to Title 23, chapter 1, and under the control of the department of fish, wildlife, and parks, by grant, acquisition, lease, easement, or other means, a person may not:~~

~~(a) drill, construct, convert, or operate an oil or gas well, stratigraphic test well, or core hole;~~

~~(b) conduct vibroseis, drill a seismic shot hole, or set a surface charge;~~

~~(c) explore for oil or gas in a manner that damages the land surface; or~~

~~(d) construct or place any surface facility associated with oil or gas exploration or development.~~

~~(4) The prohibitions in subsection (3) do not preclude the development of oil or gas resources from beneath Makoshika state park through directional drilling or access from property outside the boundaries of the state park provided that the surface resources of the state park are not disturbed.~~

~~(5) The prohibitions listed in subsection (3) do not apply to oil or gas resources within Makoshika state park that are owned by a private person, nor do the prohibitions apply to school trust lands within the boundaries of the park. The state acknowledges the mineral rights of Dawson County and the state school trust and the private property rights of persons owning private mineral rights within Makoshika state park. The department of fish, wildlife, and parks is directed to conduct negotiations with the owners of mineral rights within Makoshika state park, with the purpose of acquiring those rights in the name of the state, and to report the results of the negotiations to the legislature no later than January 8, 2001.~~"

Section 19. Section 82-11-136, MCA, is amended to read:

"82-11-136. Expenditure of funds from bonds for plugging wells. (1) The board may accept and expend all funds received by it from bonds for properly plugging dry or abandoned wells as authorized in ~~82-11-123(5)~~ 82-11-123(1)(e).

(2) The board may accept and expend all funds received by it from bonds for properly plugging abandoned carbon dioxide injection wells as authorized in 82-11-123(1)(f) ~~and [section 5] [SECTION 4]. The funds must be deposited in the geologic storage reservoir program account established in [section 3] [SECTION 2].~~"

Section 20. Section 82-11-137, MCA, is amended to read:

"82-11-137. Class II injection well operating fee -- carbon dioxide injection well operating fee. (1) For the purpose of providing funds for defraying the expenses of operating and enforcing:

(a) the class II injection well regulatory program, as defined by the federal environmental protection agency or any successor agency, each operator of a class II injection well may be required to pay an annual operating fee not to exceed $300 per injection well; and

(b) the carbon dioxide injection well regulatory program, each geologic storage operator of a carbon dioxide injection well may be required to pay an annual operating fee not to exceed $5,000 per injection well.

(2) The department shall collect the operating fee at ~~such~~ a time ~~as the~~ established by board ~~may prescribe by~~ rule. All money collected under this section must be forwarded to the state treasurer for deposit in the state special revenue fund and must be used for the purpose prescribed in subsection (1).

(3) The board shall, by rule adopted pursuant to the provisions of the Montana Administrative Procedure Act, fix the amount of the fee described in subsection (1) and may from time to time reduce or increase the amount ~~thereof~~ of the fee as the expenses chargeable against the state special revenue fund may require. However, the assessment fixed by the board may not exceed the limits prescribed in subsection (1). The amount of the fee must be expressed in dollars."

Section 21. Section 82-11-161, MCA, is amended to read:

"82-11-161. Oil and gas production damage mitigation account -- statutory appropriation. (1) There is an oil and gas production damage mitigation account within the state special revenue fund established in 17-2-102. The oil and gas production damage mitigation account is controlled by the board.

(2) At the beginning of each biennium, there must be allocated to the oil and gas production damage mitigation account $50,000 from the interest income of the resource indemnity trust fund, except that if at the beginning of a biennium the unobligated cash balance in the oil and gas production damage mitigation account:

(a) equals or exceeds $200,000, no allocation will be made; or

(b) is less than $200,000, then an amount less than or equal to the difference between the unobligated cash balance and $200,000, but not more than $50,000, must be allocated to the oil and gas production damage mitigation account from the interest income of the resource indemnity trust fund.

(3) In addition to the allocation provided in subsection (2), there must be deposited in the oil and gas production damage mitigation account all funds received by the board pursuant to ~~82-11-136~~ 82-11-136(1).

(4) If a sufficient balance exists in the account, funds are statutorily appropriated, as provided in 17-7-502, from the oil and gas production damage mitigation account, upon the authorization of the board, to pay the reasonable costs of properly plugging a well and either reclaiming or restoring, or both, a drill site or other drilling or producing area damaged by oil and gas operations if the board determines that the well, sump, hole, drill site, or drilling or producing area has been abandoned and the responsible person cannot be identified or located or if the responsible person fails or refuses to properly plug, reclaim, or restore the well, sump, hole, drill site, or drilling or producing area within a reasonable time after demand by the board. ~~The~~ However, the responsible person shall~~, however,~~ pay costs to the extent of that person's available resources and is subsequently liable to fully reimburse the account or is subject to a lien on property as provided in 82-11-164 for costs expended from the account to properly plug, reclaim, or restore the well, sump, hole, drill site, or drilling or producing area and to mitigate any damage for which the person is responsible.

(5) Interest from funds in the oil and gas production damage mitigation account accrues to that account."

Section 22. Section 82-11-163, MCA, is amended to read:

"82-11-163. Landowner's bond on noncommercial well. If the owner of the surface land upon which has been drilled a well that fails to produce oil or gas in commercial quantities acquires the well for domestic purposes, the board may cancel and absolve the bond required in ~~82-11-123~~ 82-11-123(1)(e) upon its acceptance of surety in the form of a certificate of deposit or a surety bond in the amount of $5,000 for a single well or in the amount of $10,000 for more than one well or in the form of a property bond of two times the value of the required certificate of deposit or surety bond. The release of the certificate of deposit, surety bond, or property bond must be conditioned on proof provided by the landowner that the well has been properly plugged."

Section 23. Section 82-11-201, MCA, is amended to read:

"82-11-201. Establishment of well spacing units. (1) To prevent or to assist in preventing waste of oil or gas prohibited by this chapter, to avoid the drilling of unnecessary wells, or to protect correlative rights, the board, upon its own motion or upon application of an interested person, after hearing, may by order establish:

(a) temporary spacing units on a statewide basis or for defined areas within the state for carbon dioxide injection wells, oil, gas, or oil and gas wells drilled to varying depths; and

(b) permanent spacing units for a discovered pool, except in those pools that, prior to April 1, 1953, have been developed to ~~such~~ an extent that it would be impracticable or unreasonable to establish spacing units at the existing stage of development.

(2) The size and the shape of temporary spacing units must be established to promote the orderly development of unproven areas and must be uniform throughout the surface area and depths covered by the unit. A temporary spacing unit must remain in effect until superseded by an order issued by the board or until a permanent spacing unit is established.

(3) Permanent spacing units do not need to be uniform in size or shape but must result in the efficient and economic development of the pool as a whole. In establishing permanent spacing units, the acreage to be embraced within a unit and the shape of the unit must be determined by the board based upon evidence introduced at the hearing. The board may divide a pool into zones and establish spacing units for each zone if necessary for a purpose mentioned in subsection (1) or to facilitate production through the use of innovative drilling and completion methods. The spacing units within the zone may differ in size and shape from spacing

units in any other zone but may not be smaller than the maximum area that can be efficiently and economically drained by one well.

(4) An order establishing temporary or permanent spacing units may permit only one well to be drilled and produced from the common source of supply on any spacing unit, and the well must be drilled at a location authorized by the order, with an exception as may be reasonably necessary. The exception may be included if, upon application, notice, and hearing, the board finds that the spacing unit is located on the edge of a pool or field and adjacent to a producing unit or, for some other reason, that the requirement to drill the well at the authorized location on the spacing unit would be inequitable or unreasonable. The board shall take action to offset any advantage that the person securing the exception may have over other producers by reason of drilling the well as an exception. The order must include provisions to prevent production from the spacing unit from being more than its just and equitable share of the producible oil and gas in the pool.

(5) An order establishing temporary or permanent spacing units for a pool must cover all lands determined or believed to be underlaid by the pool and may be modified after notice and hearing by the board to include additional areas subsequently determined to be underlaid by the pool.

(6) The board, upon application, notice, and hearing, may increase or decrease the size of a temporary or permanent spacing unit or permit the drilling of additional wells in a spacing unit for a purpose mentioned in subsection (1)."

Section 24. Section 82-11-204, MCA, is amended to read:

"82-11-204. Hearing on operation of pool as unit. (1) (a) The board, upon the application of persons owning leasehold interests underlying 60% of the surface within the delineated area, shall hold a hearing to consider the need for the operation as a unit of one or more pools or parts ~~thereof~~ of the pools in a field for enhanced recovery purposes ~~as~~ related to oil or oil and gas, to increase ultimate recovery, or to prevent waste of gas from pools or portions of pools where gas only is produced.

(b) The board, upon the application of persons owning or holding subsurface storage rights of 60% of the storage capacity of the proposed storage area, shall hold a hearing to consider the need for the operation of a unit for the long-term storage of carbon dioxide.

(2) (a) At least 60 days prior to application, the applicant shall, by registered or certified mail, notify all known persons owning an interest in the oil and gas within the proposed unit area as disclosed by the records of the county or counties ~~in which~~ where the proposed unit area is situated, at those persons' ~~last known~~

last-known addresses, of the applicant's intention to make the application.

(b) At least 60 days prior to application, if the application is for a carbon dioxide storage reservoir, the applicant shall, by registered or certified mail, notify all persons with an ownership interest in the surface, subsurface storage rights, and the subsurface minerals within the proposed unit area as disclosed by the records of the county or counties where the proposed unit area is situated, at those persons' last-known addresses, of the applicant's intention to make the application.

(c) At the same time producers ~~shall~~ must be furnished with a plan of unit operations. Upon written request of an operator of a lease ~~which~~ that is in whole or in part within the confines of the proposed delineated area, the applicant shall furnish the operator with copies of any exhibits to be submitted to the board at the time of hearing."

Section 25. Section 82-11-205, MCA, is amended to read:

"82-11-205. Board order for unit operation -- criteria. The board shall make an order providing for the unit operation of a pool or pools or part ~~thereof~~ of the pools or of a geologic storage reservoir if it determines, based on evidence presented at the hearing, that:

(1) ~~such~~ the operation is reasonably necessary to increase the ultimate recovery of oil or gas or the operation is necessary for the long-term storage of carbon dioxide;

(2) the value of the estimated additional recovery of oil or gas less royalties or, as to gas pools only, the value of the economies to be effected, exceeds the estimated additional cost incident to conducting ~~such~~ the operations; and

(3) (a) the full areal extent of the pool or pools or part ~~thereof~~ of the pools has been reasonably defined and determined by drilling operations; or

(b) in the case of a geologic storage reservoir, the full areal extent of the project has been reasonably defined and determined by drilling operations, geologic interpretation, seismic information, or other information acceptable to the board."

Section 26. Section 82-11-214, MCA, is amended to read:

"82-11-214. Title to oil and gas rights not affected by board order. Except to the extent that the parties affected ~~so~~ agree and in accordance with ~~[section 5(5)]~~ [SECTION ~~4(7)~~ 4(8)], an order providing for unit operations does not result in a transfer of all or any part of the title of any person to the carbon dioxide rights or

oil and gas rights in any tract in the unit area. All property, whether real or personal, that may be acquired in the conduct of unit operations ~~hereunder shall~~ under this part must be acquired for the account of the owners within the unit area and ~~shall be~~ are the property of those owners in the proportion that the expenses of unit operations are charged."

NEW SECTION. **Section 27. 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 28. Codification instruction.** [Sections 1 through ~~7~~ 6] are intended to be codified as an integral part of Title 82, chapter 11, part 1, and the provisions of Title 82, chapter 11, part 1, apply to [sections 1 through ~~7~~ 6].

NEW SECTION. **Section 29. 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 30. 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 board of oil and gas conservation shall in consultation with the department of environmental quality and the department of natural resources and conservation develop draft rules to implement [this act] and seek primacy.

NEW SECTION. **Section 31. Effective dates -- contingency.** (1) [Sections ~~3~~ 2 through ~~23~~ ~~25~~ 26] are effective on the date that the board of oil and gas conservation is granted primacy to administer activities at carbon dioxide sequestration wells by the United States environmental protection agency.

(2) [Sections 1~~, 2,~~ and ~~24~~ ~~26~~ 27 through ~~27~~ ~~29~~ 30 and this section] are effective on passage and approval.

(3) The board of oil and gas conservation shall provide a copy of the grant of primacy provided for in subsection (1) to the code commissioner.

- END -