

1 HOUSE BILL NO. 625

2 INTRODUCED BY B. MERCER

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING NUTRIENT CRITERIA FROM MONTANA WATER
5 QUALITY STANDARDS; ELIMINATING VARIANCES AND COMPLIANCE SCHEDULES FOR NUTRIENTS;
6 AMENDING SECTIONS 75-5-103 AND 75-5-105, MCA; REPEALING SECTIONS 75-5-313, 75-5-314, AND
7 75-5-319, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

8

9 WHEREAS, the objective of the Clean Water Act is to "restore and maintain the chemical, physical, and
10 biological integrity of the Nation's waters"; and

11 WHEREAS, the Environmental Protection Agency (EPA) authorized the Montana Department of
12 Environmental Quality (DEQ) to regulate most water quality programs in the state; and

13 WHEREAS, beginning in 1998, the EPA "strongly encouraged" numeric nutrient standards, which the
14 DEQ adopted in 2015; and

15 WHEREAS, these numeric nutrient standards were not explicitly required by law, as evidenced by the
16 more than 20 U.S. states that have not adopted numeric nutrient standards and instead rely on existing narrative
17 water quality standards to ensure Clean Water Act objectives are met; and

18 WHEREAS, the Nutrient Work Group, which included participants from the DEQ and EPA, worked
19 diligently to assess the viability of a general variance to allow the compliance with the numeric standards without
20 widespread economic consequences and advancement of technology to address phosphorous and nitrogen; and

21 WHEREAS, EPA personnel actively participated in the Nutrient Work Group but failed to disclose to other
22 participants the existence of proposed federal rules, which, if promulgated, would have changed federal law with
23 respect to the showing necessary to receive a variance; and

24 WHEREAS, after promulgation of the federal rules by the EPA, the agency rejected certain variances
25 approved by the DEQ as "out of scope"; and

26 WHEREAS, the legal foundation upon which Montana's nutrient rules and variances is based has been
27 eroded by the DEQ's and EPA's subsequent rulemaking; and

28 WHEREAS, Montana's numeric nutrient standards and variances provided for in law and in ARM
29 17.30.201, 17.30.507, 17.30.516, 17.30.602, 17.30.619, 17.30.622, 17.30.623, 17.30.624, 17.30.625, 17.30.626,
30 17.30.627, 17.30.628, 17.30.629, 17.30.635, 17.30.660, 17.30.702, and 17.30.715 have subsequently proven

1 to be unachievable and burdensome, especially for the Montana's municipal wastewater treatment systems.

2

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

4

5 NEW SECTION. **Section 1. Board to amend rules.** The board of environmental review shall amend
6 ARM 17.30.201, 17.30.507, 17.30.516, 17.30.602, 17.30.619, 17.30.622, 17.30.623, 17.30.624, 17.30.625,
7 17.30.626, 17.30.627, 17.30.628, 17.30.629, 17.30.635, 17.30.702, and 17.30.715 to delete all references to
8 department circular DEQ-12A, department circular DEQ-12B, base numeric nutrient standards, and nutrient
9 standards variances.

10

11 NEW SECTION. **Section 2. Department to amend rules.** The department of environmental quality
12 shall amend ARM 17.30.602 and 17.30.660 to delete all references to department circular DEQ-12A, department
13 circular DEQ-12B, base numeric nutrient standards, and nutrient standards variances.

14

15 **Section 3.** Section 75-5-103, MCA, is amended to read:

16 **"75-5-103. (Temporary) Definitions.** Unless the context requires otherwise, in this chapter, the following
17 definitions apply:

18 (1) "Associated supporting infrastructure" means:

19 (a) electric transmission and distribution facilities;

20 (b) pipeline facilities;

21 (c) aboveground ponds and reservoirs and underground storage reservoirs;

22 (d) rail transportation;

23 (e) aqueducts and diversion dams;

24 (f) devices or equipment associated with the delivery of an energy form or product produced at an energy
25 development project; or

26 (g) other supporting infrastructure, as defined by board rule, that is necessary for an energy development
27 project.

28 ~~(2) (a) "Base numeric nutrient standards" means numeric water quality criteria for nutrients in surface~~
29 ~~water that are adopted to protect the designated uses of a surface water body.~~

30 ~~_____ (b) The term does not include numeric water quality standards for nitrate, nitrate plus nitrite, or nitrite that~~

1 ~~are adopted to protect human health.~~

2 ~~(3)(2)~~ "Board" means the board of environmental review provided for in 2-15-3502.

3 ~~(4)(3)~~ "Contamination" means impairment of the quality of state waters by sewage, industrial wastes,
4 or other wastes, creating a hazard to human health.

5 ~~(5)(4)~~ "Council" means the water pollution control advisory council provided for in 2-15-2107.

6 ~~(6)(5)~~ (a) "Currently available data" means data that is readily available to the department at the time
7 a decision is made, including information supporting its previous lists of water bodies that are threatened or
8 impaired.

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

10 ~~(7)(6)~~ "Degradation" means a change in water quality that lowers the quality of high-quality waters for
11 a parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant
12 to 75-5-301(5)(c).

13 ~~(8)(7)~~ "Department" means the department of environmental quality provided for in 2-15-3501.

14 ~~(9)(8)~~ "Disposal system" means a system for disposing of sewage, industrial, or other wastes and
15 includes sewage systems and treatment works.

16 ~~(10)(9)~~ "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of
17 chemical, physical, biological, and other constituents that are discharged into state waters.

18 ~~(11)(10)~~ (a) "Energy development project" means each plant, unit, or other development and associated
19 developments, including any associated supporting infrastructure, designed for or capable of:

20 (i) generating electricity;

21 (ii) producing gas derived from coal;

22 (iii) producing liquid hydrocarbon products;

23 (iv) refining crude oil or natural gas;

24 (v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax incentive
25 pursuant to Title 15, chapter 70, part 5;

26 (vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant
27 to 15-32-701; or

28 (vii) transmitting electricity through an electric transmission line with a design capacity of equal to or
29 greater than 50 kilovolts.

30 (b) The term does not include a nuclear facility as defined in 75-20-1202.

1 ~~(12)~~(11) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971,
2 whether or not those uses are included in the water quality standards.

3 ~~(13)~~(12) "High-quality waters" means all state waters, except:

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

6 (b) surface waters that:

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

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

9 ~~(14)~~(13) "Impaired water body" means a water body or stream segment for which sufficient credible data
10 shows that the water body or stream segment is failing to achieve compliance with applicable water quality
11 standards.

12 ~~(15)~~(14) "Industrial waste" means a waste substance from the process of business or industry or from
13 the development of any natural resource, together with any sewage that may be present.

14 ~~(16)~~(15) "Interested person" means a person who has a real property interest, a water right, or an
15 economic interest that is or may be directly and adversely affected by the department's preliminary decision
16 regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested
17 authorization to degrade high-quality waters.

18 ~~(17)~~(16) "Load allocation" means the portion of a receiving water's loading capacity that is allocated to
19 one of its existing or future nonpoint sources or to natural background sources.

20 ~~(18)~~(17) "Loading capacity" means the mass of a pollutant that a water body can assimilate without a
21 violation of water quality standards. For pollutants that cannot be measured in terms of mass, it means the
22 maximum change that can occur from the best practicable condition in a surface water without causing a violation
23 of the surface water quality standards.

24 ~~(19)~~(18) "Local department of health" means the staff, including health officers, employed by a county,
25 city, city-county, or district board of health.

26 ~~(20)~~(19) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium, barium,
27 cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver, thallium, and zinc.

28 ~~(21)~~(20) "Mixing zone" means an area established in a permit or final decision on nondegradation issued
29 by the department where water quality standards may be exceeded, subject to conditions that are imposed by
30 the department and that are consistent with the rules adopted by the board.

1 ~~(22)~~ "Nutrient standards variance" means numeric water quality criteria for nutrients based on a
2 determination that base numeric nutrient standards cannot be achieved because of economic impacts or because
3 of the limits of technology. The term includes individual, general, and alternative nutrient standards variances in
4 accordance with ~~75-5-313~~.

5 ~~(23)~~ "Nutrient work group" means an advisory work group, convened by the department, representing
6 publicly owned and privately owned point sources of pollution, nonpoint sources of pollution, and other interested
7 parties that will advise the department on the base numeric nutrient standards, the development of nutrient
8 standards variances, and the implementation of those standards and variances together with associated
9 economic impacts.

10 ~~(24)~~(21) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime,
11 sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded
12 equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

13 ~~(25)~~(22) "Outstanding resource waters" means:

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

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

18 ~~(26)~~(23) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point
19 source.

20 ~~(27)~~(24) "Parameter" means a physical, biological, or chemical property of state water when a value of
21 that property affects the quality of the state water.

22 ~~(28)~~(25) "Person" means the state, a political subdivision of the state, institution, firm, corporation,
23 partnership, individual, or other entity and includes persons resident in Canada.

24 ~~(29)~~(26) "Point source" means a discernible, confined, and discrete conveyance, including but not limited
25 to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other
26 floating craft, from which pollutants are or may be discharged.

27 ~~(30)~~(27) (a) "Pollution" means:

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

1 (ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other
 2 substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or
 3 injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife.

4 (b) The term does not include:

5 (i) a discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge
 6 permit rules adopted by the board under this chapter;

7 (ii) activities conducted under this chapter that comply with the conditions imposed by the department
 8 in short-term authorizations pursuant to 75-5-308;

9 (iii) contamination of ground water within the boundaries of an underground mine using in situ coal
 10 gasification and operating in accordance with a permit issued under 82-4-221.

11 (c) Contamination referred to in subsection ~~(30)(b)(iii)~~ (27)(b)(iii) does not require a mixing zone.

12 ~~(31)(28)~~ "Sewage" means water-carried waste products from residences, public buildings, institutions,
 13 or other buildings, including discharge from human beings or animals, together with ground water infiltration and
 14 surface water present.

15 ~~(32)(29)~~ "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other
 16 wastes to an ultimate disposal point.

17 ~~(33)(30)~~ "Standard of performance" means a standard adopted by the board for the control of the
 18 discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application of
 19 the best available demonstrated control technology, processes, operating methods, or other alternatives,
 20 including, when practicable, a standard permitting no discharge of pollutants.

21 ~~(34)(31)~~ (a) "State waters" means a body of water, irrigation system, or drainage system, either surface
 22 or underground.

23 (b) The term does not apply to:

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

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

27 ~~(35)(32)~~ "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in
 28 combination with narrative information, that supports a finding as to whether a water body is achieving compliance
 29 with applicable water quality standards.

30 ~~(36)(33)~~ "Threatened water body" means a water body or stream segment for which sufficient credible

1 data and calculated increases in loads show that the water body or stream segment is fully supporting its
2 designated uses but threatened for a particular designated use because of:

3 (a) proposed sources that are not subject to pollution prevention or control actions required by a
4 discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or

5 (b) documented adverse pollution trends.

6 ~~(37)~~(34) "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations
7 for point sources and load allocations for both nonpoint sources and natural background sources established at
8 a level necessary to achieve compliance with applicable surface water quality standards.

9 ~~(38)~~(35) "Treatment works" means works, including sewage lagoons, installed for treating or holding
10 sewage, industrial wastes, or other wastes.

11 ~~(39)~~(36) "Waste load allocation" means the portion of a receiving water's loading capacity that is allocated
12 to one of its existing or future point sources.

13 ~~(40)~~(37) "Water quality protection practices" means those activities, prohibitions, maintenance
14 procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain,
15 and improve the quality of state waters. Water quality protection practices include but are not limited to treatment
16 requirements, standards of performance, effluent standards, and operating procedures and practices to control
17 site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

18 ~~(41)~~(38) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or
19 otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

20 ~~(42)~~(39) "Watershed advisory group" means a group of individuals who wish to participate in an advisory
21 capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the development
22 of TMDLs under 75-5-703, including those groups or individuals requested by the department to participate in
23 an advisory capacity as provided in 75-5-704.

24 **75-5-103. (Effective on occurrence of contingency) Definitions.** Unless the context requires
25 otherwise, in this chapter, the following definitions apply:

26 (1) "Associated supporting infrastructure" means:

27 (a) electric transmission and distribution facilities;

28 (b) pipeline facilities;

29 (c) aboveground ponds and reservoirs and underground storage reservoirs;

30 (d) rail transportation;

1 (e) aqueducts and diversion dams;

2 (f) devices or equipment associated with the delivery of an energy form or product produced at an energy
3 development project; or

4 (g) other supporting infrastructure, as defined by board rule, that is necessary for an energy development
5 project.

6 ~~(2)(a) "Base numeric nutrient standards" means numeric water quality criteria for nutrients in surface
7 water that are adopted to protect the designated uses of a surface water body.~~

8 ~~—— (b) The term does not include numeric water quality standards for nitrate, nitrate plus nitrite, or nitrite that
9 are adopted to protect human health.~~

10 ~~(3)(2)~~ (2) "Board" means the board of environmental review provided for in 2-15-3502.

11 ~~(4)(3)~~ (3) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes,
12 or other wastes, creating a hazard to human health.

13 ~~(5)(4)~~ (4) "Council" means the water pollution control advisory council provided for in 2-15-2107.

14 ~~(6)(5)~~ (5) (a) "Currently available data" means data that is readily available to the department at the time
15 a decision is made, including information supporting its previous lists of water bodies that are threatened or
16 impaired.

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

18 ~~(7)(6)~~ (6) "Degradation" means a change in water quality that lowers the quality of high-quality waters for
19 a parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant
20 to 75-5-301(5)(c).

21 ~~(8)(7)~~ (7) "Department" means the department of environmental quality provided for in 2-15-3501.

22 ~~(9)(8)~~ (8) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and
23 includes sewage systems and treatment works.

24 ~~(10)(9)~~ (9) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of
25 chemical, physical, biological, and other constituents that are discharged into state waters.

26 ~~(11)(10)~~ (10) (a) "Energy development project" means each plant, unit, or other development and associated
27 developments, including any associated supporting infrastructure, designed for or capable of:

28 (i) generating electricity;

29 (ii) producing gas derived from coal;

30 (iii) producing liquid hydrocarbon products;

- 1 (iv) refining crude oil or natural gas;
- 2 (v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax incentive
3 pursuant to Title 15, chapter 70, part 5;
- 4 (vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant
5 to 15-32-701; or
- 6 (vii) transmitting electricity through an electric transmission line with a design capacity of equal to or
7 greater than 50 kilovolts.
- 8 (b) The term does not include a nuclear facility as defined in 75-20-1202.
- 9 ~~(12)~~(11) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971,
10 whether or not those uses are included in the water quality standards.
- 11 ~~(13)~~(12) "High-quality waters" means all state waters, except:
- 12 (a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by
13 the board's classification rules; and
- 14 (b) surface waters that:
- 15 (i) are not capable of supporting any one of the designated uses for their classification; or
16 (ii) have zero flow or surface expression for more than 270 days during most years.
- 17 ~~(14)~~(13) "Impaired water body" means a water body or stream segment for which sufficient credible data
18 shows that the water body or stream segment is failing to achieve compliance with applicable water quality
19 standards.
- 20 ~~(15)~~(14) "Industrial waste" means a waste substance from the process of business or industry or from
21 the development of any natural resource, together with any sewage that may be present.
- 22 ~~(16)~~(15) "Interested person" means a person who has a real property interest, a water right, or an
23 economic interest that is or may be directly and adversely affected by the department's preliminary decision
24 regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested
25 authorization to degrade high-quality waters.
- 26 ~~(17)~~(16) "Load allocation" means the portion of a receiving water's loading capacity that is allocated to
27 one of its existing or future nonpoint sources or to natural background sources.
- 28 ~~(18)~~(17) "Loading capacity" means the mass of a pollutant that a water body can assimilate without a
29 violation of water quality standards. For pollutants that cannot be measured in terms of mass, it means the
30 maximum change that can occur from the best practicable condition in a surface water without causing a violation

1 of the surface water quality standards.

2 ~~(19)~~(18) "Local department of health" means the staff, including health officers, employed by a county,
3 city, city-county, or district board of health.

4 ~~(20)~~(19) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium, barium,
5 cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver, thallium, and zinc.

6 ~~(24)~~(20) "Mixing zone" means an area established in a permit or final decision on nondegradation issued
7 by the department where water quality standards may be exceeded, subject to conditions that are imposed by
8 the department and that are consistent with the rules adopted by the board.

9 ~~(22)~~ "Nutrient standards variance" means numeric water quality criteria for nutrients based on a
10 determination that base numeric nutrient standards cannot be achieved because of economic impacts or because
11 of the limits of technology. The term includes individual, general, and alternative nutrient standards variances in
12 accordance with 75-5-313.

13 ~~(23)~~ "Nutrient work group" means an advisory work group, convened by the department, representing
14 publicly owned and privately owned point sources of pollution, nonpoint sources of pollution, and other interested
15 parties that will advise the department on the base numeric nutrient standards, the development of nutrient
16 standards variances, and the implementation of those standards and variances together with associated
17 economic impacts.

18 ~~(24)~~(21) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime,
19 sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded
20 equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

21 ~~(25)~~(22) "Outstanding resource waters" means:

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

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

26 ~~(26)~~(23) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point
27 source.

28 ~~(27)~~(24) "Parameter" means a physical, biological, or chemical property of state water when a value of
29 that property affects the quality of the state water.

30 ~~(28)~~(25) "Person" means the state, a political subdivision of the state, institution, firm, corporation,

1 partnership, individual, or other entity and includes persons resident in Canada.

2 ~~(29)~~(26) "Point source" means a discernible, confined, and discrete conveyance, including but not limited
3 to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other
4 floating craft, from which pollutants are or may be discharged.

5 ~~(30)~~(27) (a) "Pollution" means:

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

9 (ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other
10 substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or
11 injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife.

12 (b) The term does not include:

13 (i) a discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge
14 permit rules adopted by the board under this chapter;

15 (ii) activities conducted under this chapter that comply with the conditions imposed by the department
16 in short-term authorizations pursuant to 75-5-308;

17 (iii) contamination of ground water within the boundaries of a geologic storage reservoir, as defined in
18 82-11-101, by a carbon dioxide injection well in accordance with a permit issued pursuant to Title 82, chapter 11,
19 part 1;

20 (iv) contamination of ground water within the boundaries of an underground mine using in situ coal
21 gasification and operating in accordance with a permit issued under 82-4-221;

22 (c) Contamination referred to in subsections ~~(30)(b)(iii) and (30)(b)(iv)~~ (27)(b)(iii) and (27)(b)(iv) does not
23 require a mixing zone.

24 ~~(31)~~(28) "Sewage" means water-carried waste products from residences, public buildings, institutions,
25 or other buildings, including discharge from human beings or animals, together with ground water infiltration and
26 surface water present.

27 ~~(32)~~(29) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other
28 wastes to an ultimate disposal point.

29 ~~(33)~~(30) "Standard of performance" means a standard adopted by the board for the control of the
30 discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application of

1 the best available demonstrated control technology, processes, operating methods, or other alternatives,
2 including, when practicable, a standard permitting no discharge of pollutants.

3 ~~(34)~~(31) (a) "State waters" means a body of water, irrigation system, or drainage system, either surface
4 or underground.

5 (b) The term does not apply to:

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

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

9 ~~(35)~~(32) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in
10 combination with narrative information, that supports a finding as to whether a water body is achieving compliance
11 with applicable water quality standards.

12 ~~(36)~~(33) "Threatened water body" means a water body or stream segment for which sufficient credible
13 data and calculated increases in loads show that the water body or stream segment is fully supporting its
14 designated uses but threatened for a particular designated use because of:

15 (a) proposed sources that are not subject to pollution prevention or control actions required by a
16 discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or

17 (b) documented adverse pollution trends.

18 ~~(37)~~(34) "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations
19 for point sources and load allocations for both nonpoint sources and natural background sources established at
20 a level necessary to achieve compliance with applicable surface water quality standards.

21 ~~(38)~~(35) "Treatment works" means works, including sewage lagoons, installed for treating or holding
22 sewage, industrial wastes, or other wastes.

23 ~~(39)~~(36) "Waste load allocation" means the portion of a receiving water's loading capacity that is allocated
24 to one of its existing or future point sources.

25 ~~(40)~~(37) "Water quality protection practices" means those activities, prohibitions, maintenance
26 procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain,
27 and improve the quality of state waters. Water quality protection practices include but are not limited to treatment
28 requirements, standards of performance, effluent standards, and operating procedures and practices to control
29 site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

30 ~~(41)~~(38) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or

1 otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.
 2 ~~(42)(39)~~ "Watershed advisory group" means a group of individuals who wish to participate in an advisory
 3 capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the development
 4 of TMDLs under 75-5-703, including those groups or individuals requested by the department to participate in
 5 an advisory capacity as provided in 75-5-704."
 6

7 **Section 4.** Section 75-5-105, MCA, is amended to read:

8 **"75-5-105. Confidentiality of records.** Except as provided in 80-15-108, any information concerning
 9 sources of pollution that is furnished to the board or department or that is obtained by either of them is a matter
 10 of public record and open to public use. However, any information unique to the owner or operator of a source
 11 of pollution that would, if disclosed, reveal methods or processes entitled to protection as trade secrets must be
 12 maintained as confidential if so determined by a court of competent jurisdiction. The owner or operator shall file
 13 a declaratory judgment action to establish the existence of a trade secret if the owner or operator wishes the
 14 information to remain confidential. The department must be served in the action and may intervene as a party.
 15 Any information not intended to be public when submitted to the board or department must be submitted in writing
 16 and clearly marked as confidential. ~~Except as provided in 75-5-314, the~~ The data describing physical and
 17 chemical characteristics of a waste discharged to state waters may not be considered confidential. The board
 18 may use any information in compiling or publishing analyses or summaries relating to water pollution if the
 19 analyses or summaries do not identify any owner or operator of a source of pollution or reveal any information
 20 that is otherwise made confidential by this section."
 21

22 NEW SECTION. **Section 5. Repealer.** The following sections of the Montana Code Annotated are
 23 repealed:

- 24 75-5-313. Nutrient standards variances -- individual, general, and alternative.
 25 75-5-314. Confidentiality of base numeric standards and nutrient standards variances.
 26 75-5-319. Compliance schedule for base numeric nutrient standards.
 27

28 NEW SECTION. **Section 6. Effective date.** [This act] is effective on passage and approval.
 29

- END -