

Statement of Purpose and Implication:

I-191 declares portions of the Gallatin and Madison Rivers north and west of Yellowstone National Park to be "Outstanding Resource Waters." The stretches of water that I-191 would designate run from Yellowstone National Park to the confluence of Spanish Creek on the Gallatin River and from Hebgen Lake to Ennis Lake on the Madison River.

I-191 bypasses the existing review process for such a designation, including the local government consultation, review of social and economic impacts, and environmental impact statement that would be involved.

I-191 also prohibits the State from approving a permit for any new or increased discharge into Outstanding Resource Waters if the permit would result in any adverse change in water quality, including only a temporary change.

☐ YES on I-191

☐ NO on I-191

Proposed Initiative

Section 1. Section 75-5-316, MCA, is amended to read:

"75-5-316. Outstanding resource water classification -- rules -- criteria -- limitations -- procedure -- definition. (1) As provided under the provisions of 75-5-301 and this section, the department may adopt rules regarding the classification of waters as outstanding resource waters.

(2) The department may not:

(a) grant an authorization to degrade under 75-5-303 in outstanding resource waters; or

(b) allow a new or increased point source discharge that would result in any temporary or permanent change in the water quality of an outstanding

resource water.

(3) (a) A person may petition the department for rulemaking to classify state waters as outstanding resource waters. The department shall initially review a petition against the criteria identified in subsection (3)(c) to determine whether the petition contains sufficient credible information for the department to accept the petition.

(b) The department may reject a petition without further review if it determines that the petition does not contain the sufficient credible information required by subsection (3)(a). If the department rejects a petition under this subsection (3)(b), it shall specify in writing the reasons for the rejection and the petition's deficiencies.

(c) The department may not adopt a rule classifying state waters as outstanding resource waters until it accepts a petition and makes a written finding containing the provisions enumerated in subsection (3)(d) that, based on a preponderance of the evidence:

(i) the waters identified in the petition constitute an outstanding resource based on the criteria provided in subsection (4);

(ii) the increased protection under the classification is necessary to protect the outstanding resource identified under subsection (3)(a) because of a finding that the outstanding resource is at risk of having one or more of the criteria provided in subsection (4) compromised as a result of pollution; and

(iii) classification as an outstanding resource water is necessary because of a finding that there is no other effective process available that will achieve the necessary protection.

(d) The written finding provided for in subsection (3)(c) must:

(i) identify the criteria provided in subsection (4) that serve as justification for the determination that the water is an outstanding resource;

(ii) specifically identify the criteria that are at risk and explain why those criteria are at risk; and

(iii) specifically explain why other available processes, including the requirements of 75-5-303, will not achieve the necessary protection.

(4) The department shall consider the following criteria in determining whether certain state waters are outstanding resource waters. However, the department may determine that compliance with one or more of these criteria is insufficient to warrant classification of the water as an outstanding resource water. The department shall consider:

(a) whether the waters have been designated as wild and scenic;

(b) the presence of endangered or threatened species in the waters;

(c) the presence of an outstanding recreational fishery in the waters;

(d) whether the waters provide the only source of suitable water for a municipality or industry;

(e) whether the waters provide the only source of suitable water for

domestic water supply; and

(f) issue a final decision on acceptance or rejection of the petition, which must include a response to comments received by the department, and make copies of this decision available to the public.

(6) (a) After acceptance of a petition, the department shall prepare an environmental impact statement, as provided under Title 75, chapter 1, part 2, and this section.

(b) (i) The petitioner is responsible for all of the costs associated with gathering and compiling data and information, and completing the environmental impact statement.

(ii) Before the department may initiate work on the environmental impact statement, the petitioner shall pay the estimated cost of completing the environmental impact statement, as determined by the department.

(iii) Upon completion of the environmental impact statement, the petitioner shall pay the department any costs that exceeded the estimated cost. If the cost of the environmental impact statement was less than the estimated cost paid by the petitioner, the department shall reimburse the difference to the petitioner.

(iv) The department may not grant or deny a petition until full payment for the environmental impact statement is received.

(7) The department shall consult with other relevant state agencies and

county governments when reviewing outstanding resource water classification petitions.

(8) (a) After completion of an environmental impact statement and consultation with state agencies and local governments, the department may deny an accepted outstanding resource water classification petition if it finds that:

(i) the requirements of subsection (3)(c) have not been met; or

(ii) based on information available to the department from the environmental impact statement or otherwise, approving the outstanding resource waters classification petition would cause significant adverse environmental, social, or economic impacts.

(b) If the department denies the petition, it shall identify its reasons for petition denial.

(c) If the department grants the petition, the department shall initiate rulemaking to classify the waters as outstanding resource waters.

(9) A rule classifying state waters as outstanding resource waters under this section may be adopted but is not effective until approved by the legislature.

(10) The department may not postpone or deny an application for an authorization to degrade state waters under 75-5-303 based on pending:

(a) department action on an outstanding resource water classification

petition regarding those waters; or

(b) legislative approval of department action designating those waters as outstanding resource waters.

(11) As used in this section, "petitioner" means an individual, corporation, partnership, firm, association, or other private or public entity that petitions the department to adopt rules to classify waters as outstanding resource waters.

(12) The following surface waters are classified as outstanding resource waters:

(a) Gallatin River from the boundary of Yellowstone National Park to the confluence of Spanish Creek.

(b) Madison River from Hebgen Lake to Ennis Lake."

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