

EQC – Presentation of DNRC 2007 Legislation Under Consideration

July 18, 2006

OBPP No.:

5706/24/001 Groundwater Appropriation in closed basins and augmentation

The purpose of this legislation under consideration is to further protect existing water rights to surface water from groundwater appropriations; to provide the mechanism needed to allow a groundwater applicant to present a report on the groundwater surface/surface water connection and also provide an augmentation plan (to mitigate impacts) with their application for new water use permits.

A Surface Water/Groundwater Working Group (SW/GW Working Group) has been meeting since the close of the last legislative session to see if a consensus is possible for new legislation that provides for use of groundwater in closed basins. The SW/GW Working Group has identified the need to further protect surface water users while allowing some development of groundwater in closed basins if impacts were properly mitigated. This legislation would eliminate language in the basin closure statutes saying groundwater could be applied for only if it is not "immediately or directly" or "substantially connected" to surface water. This ambiguity has led to litigation against the DNRC. Under this legislation all groundwater applicants need to address the connection of groundwater to surface water scientifically. This would be analyzed in a hydrologic report that also discusses the need for augmentation to mitigate impacts. An example of augmentation is retiring irrigation rights and placing them in a stream to make up for groundwater withdrawals that impact the stream. Augmentation should be clearly identified as a beneficial use for mitigating known or potential impacts

and should be required in basin closures, and available statewide outside of closed basins.

Fiscal Impact: \$60,324 for new FTE from General Fund:
Hydrogeologist to review increased number of applications for groundwater with augmentation plans.

5706/24/002 Exempt water rights

The purpose of this legislation under consideration is to further protect existing water rights to surface water from groundwater appropriations through the exemption found at Mont. Code Ann. § 85-2-306. Under that statute anyone can drill a 35 gpm well (not to exceed 10 acre feet volume a year), put the water to use, and simply file a “notice of completion” to obtain a water right. That is so even if the well adversely affects other water users or depletes nearby streams. That exemption from the permit process is not limited in types of use. Additionally, someone can drill any number of these wells unless they are physically connected.

The DNRC is working with county planners, DEQ, many interest groups and stakeholders, including the Surface Water/Groundwater Working Group, to come up with possible legislation to make the exemption narrower and more responsive to its impacts on other water rights.

Fiscal Impact: Unknown at this time as the details of the legislation have not been worked out.

5706/24/003 Controlled groundwater area designations

The purpose of this legislation under consideration is to change the process to designate a controlled groundwater area from a contentious hearing process to the same rulemaking process used to close basin under 85-2-319. The current statutory process is old and does not work well. Numerous shortcomings with the current statute have come to light in recent controversial and contentious proceedings. By using the rulemaking process instead of a formal

hearing process that is expensive for petitioners and opponents, the DNRC would use its scientific expertise to decide whether or not to adopt a rule designating a CGWA based on the information presented in a petition. Public input would still be available, but would not require an expensive hearing process. Correct and complete requirements would be identified in statute and rules.

Fiscal Impact: If rules are adopted at a rate of one CGWA a year, publication of ARM's for the CGWA would be \$500 in addition to rules adopted defining a correct and complete petition the first year of \$1400. All costs would be General Fund.

5706/35/006 Cash leasing on state land

The purpose of this legislation under consideration is to convert agricultural leases on state trust lands from a crop share to a cash basis as they are renewed or issued.

Fiscal impact: The legislation is anticipated to increase the revenue to the school trust by approximately \$140,000 per year over the ten years required to fully implement the change.

5706/35/007 Increase fire assessment rate

The purpose of this legislation under consideration is to replace the current Forest Fire Protection Assessment fee ceiling by a formula so the total assessment would be equal to generating one third of the total DNRC wildfire program appropriation. This would require a change to current law (Mont. Code Ann. § 76-13-201). Actual rates assessed on each landowner would be driven by the rate needed to generate one third of the legislative appropriation.

Under current law (Mont. Code Ann. § 76-13-201 to 207) Montana forested land property owners are assessed a fee to pay "no greater than one third of the amount specified in the appropriation." Current rates are not adequate to meet one third of current appropriation.

Fiscal impact: There would be no fiscal impact to the DNRC as this proposal is consistent with current law.

5706/35/008 Trust land management funding of administrative costs

The purpose of this legislation under consideration is to consolidate multiple funding mechanisms into one account to simplify tracking and budgeting procedures. This bill draft (LC 7777) has been discussed extensively during the interim EQC committee on trust land funding. It is the DNRC's preference that this bill be requested by EQC.

Fiscal impact: Biennially increase funding by \$80,000 from General Fund. See fiscal note.

EXPENDITURES:	FY08	FY09
GENERAL FUND	80,000	0
STATE SPECIAL REVENUE		
FEDERAL SPECIAL REVENUE		
OTHER		
TOTAL	80000	0
REVENUE:		
GENERAL FUND		
STATE SPECIAL REVENUE		
FEDERAL SPECIAL REVENUE		
OTHER		
TOTAL	0	0
NET IMPACT ON GENERAL FUND BALANCE:	\$80,000	

5706/35/009 HJR 10 - Implement state wildfire policy

The purpose of this legislation under consideration is to implement recommendations of the HJR10 working group that were approved by the EQC to establish a state wildfire policy and update statutes related to wildland and structural fire activities. This also

further clarifies roles and responsibilities of state and local government fire services, and imposes requirement on local government to develop standards for residential and commercial development in the wildland urban interface. The final element of this legislation is consideration of minimum standards for development in the wildland urban interface and the designation of the wildland urban interface boundaries in each county.

HJR10(Jacobsen) was passed by the 2005 legislature, and was intended to develop a state wildfire policy to address lack of clear legislative intent on wildfire protection and suppression during audit of the DNRC fire and aviation program in 2004. HJR10 was also intended to update and clarify existing statutes related to wildfire and structural fire in Titles 10 and 76, and develop recommendations for wildfire funding options. The portion related to funding was referred to the Legislative Finance Committee, and consequently reduced to an ongoing discussion of legislative appropriation for average annual DNRC wildfire costs.

No fiscal impact.

5706/35/010 Contract logging and direct sale of forest products

The purpose of this legislation under consideration is to define the terms of and to authorize the DNRC to contract with firms and individuals for the harvesting, sorting, and transportation of forest products from state lands and to directly market those forest products to forest product purchasers on up to 10% of its annual sustained yield. This legislation is a result of hearings and work conducted from HJR 33. It is the DNRC's preference that this bill be requested by EQC.

Washington State has a similar program and has shown that this contract logging/direct marketing approach has, on average, yielded an additional 12-20% in net revenue to the trust beneficiaries. This approach may also provide additional flexibility, control and more predictable results where limited markets exist and in addressing and managing environmentally sensitive areas. Similar legislation was proposed in the 2005 Legislative Session which resulted in a joint

resolution (HJR 33) to study and report on issues related to contract harvesting of timber from State Trust Lands. EQC has recently prepared a contract logging white paper as an outcome of the HJR 33 Study Commission.

Fiscal impact:

EXPENDITURES:	FY08	FY09
GENERAL FUND		
STATE SPECIAL REVENUE		\$383,000
FEDERAL SPECIAL REVENUE		
OTHER		
TOTAL	\$0	\$383,000
REVENUE:		
GENERAL FUND		
STATE SPECIAL REVENUE		\$544,000
FEDERAL SPECIAL REVENUE		
OTHER		
TOTAL	\$0	\$544,000
NET IMPACT ON GENERAL FUND BALANCE:		

* The initial account balance of \$500,000 in the newly created Contract Harvesting Revolving Fund would be transferred from the existing FI Account.

* Based on selling 1,000,000 BF. Expenditures include \$280/MBF for harvesting, sorting and transportation costs to the mill an approximately \$103/MBF for sale prep and admin costs. Gross revenue is based on selling the 1,000,000 BF at \$544/MBF. This would require specialty logs such as houselogs and other specialty marketing to generate the average \$544/MBF.

5706/24/011 Ownership update for water rights

The purpose of this legislation under consideration is to create a more effective way to keep Montana's water right ownership records current. This legislation would potentially have three parts. One would amend the law, Mont. Code Ann. § 85-2-424, to make the buyer or transferee of water rights responsible for filing the ownership update form, and would also include voluntary actions on the part of title companies to update ownership electronically at closing. The

second part could be to enact a law requiring that deeds cannot be recorded until the water right ownership update is filed with the DNRC. The third part of making ownership updates work better would be to have the DNRC database coordinate with DOR's on using cadastral geocodes.

It is evident from the HB 22 adjudication fee billing process that sellers continue to fail to file water right ownership updates after they have sold property. If it becomes the buyer's responsibility, the DNRC could use the option under Revenue's debt collection program to put a lien on water rights to enhance compliance. The DNRC recently met with representatives of title companies and the real estate industry to come up with some ways to use today's technology to have ownership updated electronically at the closing.

Fiscal impact: The potential cost for developing the electronic link between cadastral geocodes and water right data base are unknown at this time.

5706/24/012 Water commissioner authority over changes

The purpose of this legislation under consideration is to clarify that a water commissioner can enforce change authorizations granted by the DNRC. To properly distribute water, a water commissioner needs authority to not only distribute water according to Water Court decrees, but also according to changes of those decreed rights as approved by the DNRC. The Water Court decrees water rights, but the DNRC authorizes changes of water rights. Examples are changes in point of diversion, place of use, purpose of use, or place of storage.

Currently Mont. Code Ann. § 85-5-101(1) states, "The commissioners have the authority to admeasure and distribute to the parties owning water rights in the source affect by the decree the waters to which they are entitled, according to their rights as fixed by the decree and by any certificates and permits issued under chapter 2 of this title." This section needs new legislation to clarify that a water commissioner has the authority to distribute changed water

rights as authorized by the DNRC pursuant to Mont. Code Ann. § 85-2-402.

No fiscal impact.

5706/35/013 Weed control on state land

The purpose of this legislation under consideration is to give the DNRC the ability to control noxious weeds on state trust lands and bill the lessee for the costs, in those situations where the lessee has been directed to control weeds by the DNRC, but fails to do so. This legislation is to implement a recommendation from the February 2003 audit of Noxious Weed Management on State Lands to establish weed management enforcement options.

Fiscal impact:

EXPENDITURES:	FY08	FY09
GENERAL FUND		
STATE SPECIAL REVENUE	5000	5000
FEDERAL SPECIAL REVENUE		
OTHER		
TOTAL	5000	5000
REVENUE:		
GENERAL FUND		
STATE SPECIAL REVENUE	7500	7500
FEDERAL SPECIAL REVENUE		
OTHER		
TOTAL	7500	7500
NET IMPACT ON GENERAL FUND BALANCE:		

5706/23/014 Public finance cleanup

The purpose of this legislation under consideration is to update and amend some older laws on the books that are outdated or impractical related to public finance for Special Improvement Districts (SIDs), Rural Improvement Districts (RIDs), Water and Sewer

Districts, cities, towns, counties. This will allow local governments and state agencies to deal more practically with public finance.

No fiscal impact.

5706/35/015 Carbon sequestration/ecosystem services leasing or licensing

The purpose of this legislation under consideration is to authorize the DNRC to license or lease state lands for the purpose of carbon sequestration or other ecosystem services. Carbon sequestration means the process of removing carbon dioxide from the atmosphere and converting it to stored compounds.

Emerging carbon sequestration and other ecosystem services markets may provide opportunities for state trust lands to participate in and contribute to state, national, and global carbon dioxide reduction and other environmental goals as well as generate additional revenue to trust beneficiaries. Shares or carbon credits would be sold on various market exchanges in units of metric tons. Other ecosystem services or credits could be sold in a similar fashion.

Fiscal impact: Increased state special revenue or reduced costs (planting, etc.) expected but no increased costs anticipated with this legislation. See fiscal note.

EXPENDITURES:	FY08	FY09
GENERAL FUND		
STATE SPECIAL REVENUE		
FEDERAL SPECIAL REVENUE		
OTHER		
TOTAL	\$0	\$0
REVENUE:		
GENERAL FUND		
STATE SPECIAL REVENUE		\$42,500
FEDERAL SPECIAL REVENUE		
OTHER		
TOTAL	\$0	\$42,500

NET IMPACT ON GENERAL FUND BALANCE:

* The carbon sequestration program would increase net revenue by reducing planting costs and/or selling carbon credits on the Chicago Climate Exchange.

* No additional expenses are anticipated. No revenue expected the first year due to rulemaking and identification of potential projects.

* Revenue based on receiving planting reimbursements from carbon buyers at \$170/ac based on DNRC costs of \$575 per thousand seedlings planted at a density of 300 seedlings per acre. The total cost for planting 300 seedlings per acre over 250 acres is approximately \$42,500.

5706/23/017 Elimination of sunset for loans to water users

The purpose of this legislation under consideration is to eliminate or extend for four years the June 30, 2007, sunset provision for loans to water user associations (Mont. Code Ann. § 85-1-613). SB 498 passed by the 2005 Legislature included a sunset provision for large loans to water user associations. In part due to the large increase in the maximum loan amount, an amendment was added to sunset the provision on June 30, 2007. If the sunset provision is not removed, the maximum loan amount will be reduced from the \$3 million authorized in SB 498 to \$300,000. Given the size of the infrastructure improvements faced by water users associations, a larger loan amount is necessary.

Fiscal impact: No fiscal impact is anticipated.

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