June 4, 2025

Submitted via Certified Mail, Return Receipt Requested

Lee Zeldin, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue N.W.
Washington, DC 20004

RE: **Petition for Rulemaking on Water Quality Standards in the State of Montana**

Dear Administrator Zeldin:

Please find enclosed a petition from Upper Missouri Waterkeeper requesting that the U.S. Environmental Protection Agency take specified steps to determine and disapprove recently adopted revisions to water quality criteria and antidegradation policy, and to promulgate numeric criteria that protect aquatic life, fisheries, and recreation uses in the State of Montana.

As set out in the attached petition, EPA not only has the authority to disapprove Montana's recent attempt to eliminate and replace its nutrient criteria and revise its antidegradation policy, but it must do so. This petition demonstrates that nutrient pollution of waterways in Montana is pervasive, that Montana's numeric nutrient criteria controll the undesirable effects of eutrophication and negative changes to water quality that result whereas narrative criteria fail to do so, and that revisions to the State's antidegradation policy conflict with EPA rules and Clean Water Act requirements. As I'm sure you are aware, Montana's numeric nutrient criteria were established by EPA itself approximately 10 years ago and, for many years now, EPA has clearly stated that numeric nutrient criteria represent a proven, science-based approach to ensuring adequate protection of waterways and designated uses across the Nation.

EPA has a mandatory duty to review the State of Montana's new water quality standards rules and make determinations that such rules comply, or not, with the CWA and its implementing regulations. Moreover, EPA must take action quickly as the state legislation contain unlawful immediate effective dates contrary to express requirements of the Act. As discussed herein Montana's revised water quality standards are unlawful in several respects and there is no rational basis on which EPA can approve these revisions. Therefore, EPA must determine the aforementioned revisions to Montana's water quality standards are unlawful, contrary to the CWA and EPA rules, and must promulgate new water quality standards that properly carry out the purposes of the CWA.

We look forward to your response to this petition.

Sincerely,

Guy Alsentzer
Executive Director

Attachment: Petition for Rulemaking under the Clean Water Act: Water Quality Criteria and Nondegradation Policy Revisions in the State of Montana

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BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

Petition for Rulemaking	)
Under the Clean Water Act	)
	)
Water Quality Criteria for Nutrients	)
and Revisions to	)
Nondegradation Policy	)
in the State of Montana	)

I. Introduction

This petition is brought pursuant to the Administrative Procedures Act, 5 U.S.C. §§ 553(e) and 555(e). For the reasons detailed below Upper Missouri Waterkeeper ("Waterkeeper") hereby petitions the U.S. Environmental Protection Agency ("EPA") to determine that recently adopted statutory changes to the State of Montana's water quality standards under Montana House Bill 664,[1] House Bill 685,[2] and House Bill 736,[3] do not meet the requirements of the Clean Water Act ("CWA") and EPA regulations implementing the CWA, fail to protect aquatic life, fisheries, recreational, and other existing and designated uses of Montana waters; to disapprove those changes; and to promptly prepare, publish, and finalize regulations setting forth revised or new numeric nutrient criteria and an antidegradation policy that protects designated uses and meet all requirements of the CWA.

Montana House Bill 664 ("HB 664") attempts to eliminate the State's science-based numeric nutrient water quality criteria that are necessary to protect many Montana waters and their designated uses from the harmful effects of nutrient pollution.

Montana House Bill 685 ("HB 685") attempts to revise the State's promulgated Nondegradation Policy, which implements antidegradation requirements of the CWA, to include

[1] Montana House Bill 664, attached hereto.
[2] Montana House Bill 685, attached hereto.
[3] Montana House Bill 736, attached hereto.

less stringent protections for existing uses of water and the level of water quality necessary to protect those uses.

Montana House Bill 736 ("HB 736") attempts to expand the use of nutrient credit trading and offsets policy in a manner that conflicts with antidegradation policy and impaired waters requirements of the CWA.

As discussed herein each of the bills above from the 2025 Legislative Session enact substantive revisions to Montana's water quality standards, and all have immediate effective dates, despite requiring EPA approval before becoming effective as a matter of federal law for CWA purposes. Moreover, each weakens water quality standards and protections for waterway uses contrary to the requirements of the CWA and EPA regulations, and in so doing require determinations from EPA that the proposed revisions do not meet the requirements of the CWA and are therefore disapproved for any CWA purpose.

II. Background

For over two decades, EPA has recognized the importance of developing numeric nutrient water quality criteria to protect designated uses of waterbodies from nutrient pollution that is associated with increases in concentrations of nitrogen and phosphorus.[4] In 2014, Montana adopted protective nutrient criteria, recognizing that the existing narrative criteria had failed to protected designated uses of Montana waters from the effects of increasing nutrient pollution.[5] EPA approved Montana's nutrient water quality standards in 2015 as fully-supported

[4] EPA, Nutrient Criteria Development; Notice of Nutrient Criteria Technical Guidance Manual: Rivers and Streams, 65 Fed. Reg. 46167 (July 27, 2000). *See also* Administrative Record 228 *et seq.* in Upper Missouri Waterkeeper v. EPA, 377 F. Supp. 3d 1156, 1159-60 (D. Mont. 2019). Where appropriate this Petition also cites to the salient AR provided in EPA's Index to the Administrative Record, filed Dec. 1, 2016 in the aforementioned action.

[5] Suplee, Watson, Nov. 2008. "Scientific and Technical Basis of the Numeric Nutrient Criteria for Montana's Wadeable Streams and Rivers." (hereinafter "Technical Basis NNC 2008"); Suplee, M.W ., and V. Watson , 2013. Scientific and Technical Basis of the Numeric Nutrient Criteria for Montana's Wadeable Streams and Rivers—Update 1.; DEQ, Notice of Public Hearing on Proposed Amendment (Water Quality), MAR Notice No. 17-356 281 (Feb. 3, 2014); AR 1220-1225 (Circular12-A), 1326, 1346, and 1636.

by sound science and necessary to protect designated uses.[6] Montana had adopted and EPA had approved a combination of reference and stressor-response approaches to nutrient water quality standards embodied in numeric nutrient criteria for nitrogen and phosphorus, grounded in sound science.[7] Montana's numeric nutrient criteria was precedential on a national scale as one of first States to comprehensively address the threat of nutrient pollution through strong numeric water quality criteria that protected all designated uses.

The 2025 Legislative Session in Montana resulted in three bills that substantively revise state law statutory frameworks for water pollution control, including:

- revisions to Montana's Antidegradation Policy (called 'nondegradation' under state law): §§ 75-5-103(15), 75-5-301(5)(a), 75-5-303(3), 75-5-316(2)(a), 75-5-516(1)(b), 75-5-605(1)(c), "New Section 9," immediate effective date.

- revisions to Montana's Numeric Nutrient Water Quality Standards: New Sections 1-2, repealing and striking all reference to numeric nutrient standards; Section 3 (amending definitions); Sections 4-6, repealer; Section 7, immediate effective date.

- revisions to Montana's Antidegradation Policy vis-a-vis expansion of authorized nutrient credit offsets, beyond existing nutrient credit trading program: New Section 1 (authorizing new nutrient offsets/trading from NPDES permit effluent limits); New Section 2 (amending Circular DEQ-13, Montana's Nutrient Trading Policy); New Section 5, (immediate effective date).

As discussed herein each of these statutory amendments require EPA to exercise its authority under Section 303(c) of the CWA to review and, thereafter, to disapprove each revision as contrary to requirements of the CWA.

III. Petition

This petition under 5 U.S.C. §§ 553(e) and 555(e), requests EPA take the following actions under its Sections 303(c)(2) and 303(c)(4)(B) authority:

> (1) make a determination that the state law elimination of numeric nutrient criteria under House Bill 664 is a revision of a water quality standard, and that the revision fails to

[6] EPA Region 8, "EPA Action on Montana's Numeric Nutrient Criteria and Variance Rules," February 26, 2015.
[7] Technical Basis NNC 2013, AR 1222.

provide full protection for designated uses, violates the CWA, and is disapproved for all CWA purposes;

(2) make a determination that state law revisions of Montana's nondegradation policy under House Bill 685 to include a feasibility analysis violates EPA's antidegradation policy rules, is inconsistent with the CWA, and is disapproved for all CWA purposes;

(3) make a determination that revisions to and expansion of Montana's nutrient credit trading policy under House Bill 736 to include nutrient offsets, statutorily defined offsets ratios, and revisions to impaired waters requirements of 33 U.S.C. 1313(d) and antidegradation requirements under 40 C.F.R. 131.12, is inconsistent with the CWA and is disapproved for all CWA purposes;

(4) make a determination that House Bill 664, House Bill 685, and House Bill 736's respective "effective immediately" dates are contrary to the CWA and disapprove such language;

(5) promulgate federal regulation applicable to Montana surface waters setting forth numeric nutrient water quality standards and a state antidegradation policy that are both compliant with and satisfy requirements of the CWA.

A. Jurisdiction and Authority of the Environmental Protection Agency

The CWA requires that states adopt water quality standards. Such standards must consist of the designated uses, the water quality criteria for waters based on such uses, and antidegradation requirements.[8] The standards must protect the public health or welfare, enhance the quality of water and wherever attainable, provide water quality for the protection and propagation of fish, shellfish and wildlife and for recreation in and on the water, taking into account their use and value of public water supplies, and agricultural, industrial, and other purposes including navigation.[9] States are also required to identify waters within their boundaries that are not attaining water quality standards. For each such impaired water, states must develop a "total maximum daily load" for the offending pollutant, which when achieved will result in compliance with the water quality standard.[10]

[8] 33 U.S.C. § 1313(c)(2)(A); 40 C.F.R. §§ 131.2, 131.3(i), 131.6.
[9] 33 U.S.C. § 1313(c)(2)(A); *see also* 40 C.F.R. § 131.5(a)-(b).
[10] 33 U.S.C. § 1313(d).

Water quality criteria must be adopted that protect the designated uses.[11] Water quality criteria are expressed as constituent concentrations, levels, and/or statements, representing a quality of water that supports a designated use(s).[12] Such criteria must be based on sound scientific rationale and must contain sufficient parameters or constituents to protect the designated use(s).[13] For waters with multiple use designations, the criteria shall support the most sensitive use.[14]

Similarly, Section 101(a) of the CWA defines the national goal of restoring and maintaining the chemical, physical, and biological integrity of the Nation's waters. Section 303(a)(4) of the CWA explicitly refers to satisfaction of antidegradation requirements under 40 C.F.R. § 131.12 prior to taking various actions which would lower water quality. 40 C.F.R. § 131.12 requires state antidegradation provisions at least as stringent as those specified in EPA's implementing rules as part of their water quality standards. Minimum requirements for state antidegradation policies include, among other items, the establishment of three categories of water. 40 C.F.R. 121.12(a)(3) prohibits any action which would lower water quality in waters designated as Outstanding National Resource Waters. 40 C.F.R. 131.12(a)(1) prohibits any action which would lower water quality below that necessary to maintain and protect existing uses. In cases where water quality is just adequate to support the propagation of fish, shellfish, and wildlife and recreation in and on the water, such water quality must be maintained and protected. In cases where water quality is lower than necessary to support these uses, the requirements in Section 303(d) of the Act, 40 C.F.R. 131.10 and other pertinent rules must be satisfied. Last, 40 C.F.R. 131.12 establishes certain minimum requirements for States to adopt regulations regulating actions which would lower water quality in high-quality waters. These

[11] 40 C.F.R. 131.11(a)(1).
[12] 40 C.F.R. § 131.3(b).
[13] 40 C.F.R. 131.11(a)(1).
[14] *Id.*

waters are defined as those in which water quality exceeds that necessary to support the propagation of fish, shellfish and wildlife and recreation in and on the water. Any action which would result in, or which would permit, a lowering of water quality must be addressed in State implementation procedures.

Actions covered by antidegradation policy include, but are not limited to the following: (1) Permit Actions: issuance/reissuance/modification of NPDES permits; issuance of variances; issuance of permits for urban runoff; issuance of Section 404 permits; adoption of or alteration of mixing zones; relocation of discharge; commencement of discharge from a new source; increases in the discharge of pollutants from point sources. (2) Standards/Load Allocation Actions: water quality standards revisions; revision of wasteload allocations; reallocation of abandoned loads; Section 401 certifications; Section 208 or 303(e) approvals; Water Quality Management Plan approvals. (3) Non-point Source Actions: changes in BMPs; resource management plan approvals; land management plan adoption, certifications or approvals. (4) Other Actions: RCRA/CERCLA actions; construction grant activities; other major federal actions pursuant to NEPA or the ESA; water quantity/water rights actions which affect water quality; federal actions regulated by Section 313 of the CWA.

In any instance when EPA determines that a new or revised standard is necessary to meet the requirements of the CWA, the Administrator shall promptly prepare and publish proposed regulations setting forth a revised or new water quality standard.[15] This petition demonstrates that the facts in combination with the CWA's plain language, EPA's regulations and guidance, support the Administrator making a determination that Montana's elimination of its numeric nutrient criteria and replacement 'to-be-determined' narrative adaptive management approach to nutrient pollution control, and revisions of its nondegradation policy's nonsignificance

[15] 33 U.S.C. § 1313(c)(4)(B), 40 C.F.R. §§ 131.5(a)(1)-(3), 131.5(b).

exemptions, are individually and collectively not fully protective of designated uses or based on sound scientific rationale and, moreover, that Montana's revisions to water quality standards and alleged immediate effective date occurred unlawfully without mandatory EPA approval.

B. Nitrogen and Phosphorus Pollution Threaten the Designated Uses of Waters in Montana

1. Nutrient Pollution is Widespread and Harming Uses of Montana's Waterbodies

It is well-documented that the addition of nitrogen and phosphorus to surface waters leads to phenomenon referred to as eutrophication. Eutrophication is increased plant and algae growth and decay in a waterbody, and all the consequential changes to the waterbody and the water quality that occur as a result. Indeed, some problems are caused by high concentrations of the nutrients themselves; for example, direct toxicity of high levels of nitrate in drinking water to humans and to aquatic organisms. Most problems caused by nitrogen and phosphorus, however, result from the stimulating effect these pollutants have on plant and microbial growth, altering the balance of natural communities, robbing the water column of oxygen, and promoting the growth of harmful microorganisms.[16]

These problems prevent waters from attaining the basic CWA "fishable/swimmable" goals, threaten the health of human and wildlife users of these waters, and impose significant costs on drinking water supplies. Nitrogen and phosphorus pollution harm Montana's waters through: damage to recreational use of waters; damage to aquatic plant and wildlife communities; damage to drinking water supplies; and damage to aesthetic quality of waters.[17]

[16] *See* Technical Basis for Montana's NNC 2008, 2013.
[17] *See generally,* DEQ Integrated Reports 2006-2020, 303d Lists.

An exhaustive body of literature shows that increased nitrogen and phosphorus loading to freshwater systems stimulates algal growth across aquatic ecosystems.[18] Researchers have consistently reported significant positive relationships between nutrient concentrations and both suspended and benthic algal biomass in streams. Chronic nitrogen and phosphorus pollution from anthropogenic nutrient additions, sometimes called cultural eutrophication, shifts aquatic ecosystems out of balance and dramatically alters food webs with many detrimental effects. Nitrogen and phosphorus over-enrichment detrimentally affects aquatic life, and leads to aquatic life impairment. These indirect effects are attributed mostly to changes in the dissolved oxygen regimen and alteration of food and habitat resources. Studies of the effects of nutrient additions to streams and resulting change in algal abundance and composition have shown major changes in the abundance and types of consumers including macroinvertebrates and fishes present in these nutrient-enriched streams.[19]

So too does nutrient pollution impair the aesthetic quality of freshwater by significantly reducing water clarity, causing floating mats of live and decomposing algae, and producing hypo and anoxic conditions resulting in unpleasant odors and event fish kills. The stimulation of freshwater algae and cyanobacteria by nutrient pollution described herein results in excessive quantities of planktonic and sestonic algae in lakes, rivers, and streams. Water clarity is decreased significantly by the algae as they overgrow the system and form blooms. These blooms and poor aesthetic conditions affect the fishing designated use of many waterways.

In adopting its statewide numeric nutrient criteria Montana DEQ specifically recognized that forms of nitrogen and phosphorus rank as the 4th, 8th, 10th, and 12th most common types of pollution in Montana's flowing waters.[20] In fact, excess nitrogen and phosphorus levels account

[18] *See* Technical Basis NNC 2008, "Section 2.0 The Science of Stream Eutrophication" & Technical Basis NNC 2013, "Section 2.5 "Literature Consulted"".
[19] *Id.*
[20] DEQ, 'Nutrient Standards Rules and Statements of Reasonable Necessity,' 2014. (Hereinafter "Rule Statement.")

for at least 17% of all stream miles impaired by all forms of water pollution in Montana.[21] DEQ recognized that "the effects of excess nitrogen and phosphorus in streams and rivers go well beyond the undesirable aquatic life referred to in the [previous] narrative standard. Excess nitrogen and phosphorus affect other water quality parameters [e.g. DO, pH, and] [t]he state-of-the-science is such that linkages can clearly be made between nitrogen and phosphorus concentrations and these other, already-adopted standards. Thus, the numeric nutrient criteria will also assure protection and attainment of the state's dissolved oxygen and pH standards which are, in and of themselves, critical to the protection of fish and aquatic life."[22] In turn, Montana developed and adopted nitrogen and phosphorus criteria set at levels so that they protect streams from the undesirable aspects of eutrophication.[23]

2. Numeric Nutrient Criteria Represent Scientific Best Practices and Consensus for Maintaining and Restoring Water Quality in Montana

Eutrophication has long been recognized as a serious water quality problem by EPA, illustrated by the fact that the agency undertook a national eutrophication survey of streams just shortly after its creation in the early 1970s. By the late 1990s EPA announced that all states and tribes must develop nutrient criteria for their respective waters, and by 2000 EPA had published a series of regionally-based numeric nutrient criteria recommendations.[24] Acknowledging the serious issues that nutrient pollutants can cause, EPA developed nutrient guidance in 2000 and directed states to create science-based numeric criteria by 2003 to protect designated uses of waters from the harmful effects of nutrient pollution as required by the Clean Water Act.[25] EPA found the nation's reliance on varying narrative standards to control nutrient pollution in waterbodies to be inadequate and lacking quantitative values and lacking specificity.[26]

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[21] *Id.*
[22] *Id.* at 1.
[23] *See* Circular DEQ 12-A (2014).
[24] EPA. Ambient Water Quality Criteria Recommendations: Information Supporting the Development of State and Tribal Nutrient Criteria, 2000. Washington, D.C., U.S. Environmental Protection Agency.
[25] EPA. Nutrient Criteria Development; Notice of Nutrient Criteria Technical Guidance Manual: Rivers and Streams, 65 Fed. Reg. 46167 (July 27, 2000). (hereinafter "EPA Nutrient Guidance 2000").
[26] EPA Nutrient Guidance 2000 at 1, 3-4.

Conversely, EPA has found numeric criteria to be more effective in protecting and supporting designated uses and more effective for regulating pollutant discharges.[27]

Montana first adopted numeric nutrient criteria on large stretches of the Clark Fork River and defined reach-specific nutrient concentrations and benthic algae biomass benchmarks.[28] Montana chose to use numeric criteria for the Clark Fork early on, instead of relying on its then-existing narrative nutrient criteria, because of the quantitative values associated with numeric criteria. Soon after, in crafting numeric nutrient criteria for statewide application, DEQ's expert nutrient scientist Dr. Suplee recognized how numeric nutrient criteria embody the precautionary approach and work synergistically with traditional DO and pH numeric criteria to better protect designated uses from eutrophication in Montana streams and rivers than narrative criteria:

> "[S]omething about the DO, pH, and narrative [nutrient] criteria was not and is not working when it comes to stream eutrophication, since eutrophication problems continue to be common in Montana… [I]f one knew the nutrient concentrations that could prevent exceedances of the DO and pH criteria in a waterbody, one has a good chance of actually attaining the DO and pH criteria because the root cause of the problem would be addressed. That is exactly what numeric nutrient criteria are intended to do."[29]

In advocating for the use of numeric nutrient criteria Dr. Suplee explicitly recognized the problematic nature of Montana's prior narrative nutrient criteria, which have "more difficult implementation challenges…there are no definitions in rule of what "undesireable" aquatic life is, or, if that could be determined, what the levels of this aquatic life should be held to."[30] Montana's narrative nutrient criteria are poorly defined such that the application of such criterion is subject to individual interpretation and, consequently, debate and varying levels of efficacy in actually protecting designated uses. Put simply, Montana's previous narrative criteria approach did not adequately address the state's rampant nutrient pollution where excess nitrogen and phosphorus levels accounted for 17 percent of <u>all</u> stream miles impaired in the state by pollution.[31]

C. <u>Montana's Nutrient Water Quality Standards</u>

1. Montana's Numeric Nutrient Criteria & EPA Approval

[27] *Id.* at 4, 9-10.
[28] Montana ARM 17.60.631.
[29] Technical Basis NNC 2008 at pp. 26.
[30] *Id*.
[31] Notice of Public Hearing on Proposed Amendment (Water Quality). MAR Notice No. 17-356 281 (Feb. 3, 2014).

To address the ongoing issue of pervasive nutrient pollution and to comply with EPA instruction to establish numeric nutrient criteria, Montana's Department of Environmental Quality ("DEQ") developed water quality standards for nutrients in Circular 12-A.[32] Montana did so because narrative nutrient criteria were not adequately addressing water quality impairments.[33] Circular 12-A set science-based numeric criteria for phosphorus and nitrogen to protect all designated use such as health, fishing, and recreation in Montana's wadeable streams.

The limits on in-stream pollutant concentrations in Circular 12-A are tied to the egoregional characteristics of Montana as well as the season in which they are to be applied. "The nitrogen and phosphorus concentrations provided here have been set at levels that will protect beneficial [AKA, designated] uses and prevent exceedances of other surface water quality standards which are commonly linked to nitrogen and phosphorus concentrations (e.g., pH and dissolved oxygen…) The nitrogen and phosphorus concentrations provided here also reflect the intent of the narrative standard at ARM 17.30.637(1)(e) and will preclude the need for case-by-case interpretations…"[34] In other words, Montana's numeric nutrient criteria represent best available science tied directly to the most efficacious means for protecting designated uses of most Montana waterways.

[32] Circular 12-A, Numeric Nutrient Criteria in Montana. July 2014 Final Edition.
[33] Technical Basis NNC 2013 at 11-12.
[34] Circular 12-A, Introduction.

Table 12A-1. Base Numeric Nutrient Standards for Wadeable Streams in Different Montana Ecoregions. If standards have been developed for level IV ecoregions (subcomponents of the level III ecoregions) they are shown in italics below the applicable level III ecoregion. Individual reaches are in the continuation of this table.

			Numeric Nutrient Standard[4]	
Ecoregion[1,2] (level III or IV) and Number	Ecoregion Level	Period When Criteria Apply[3]	Total Phosphorus (µg/L)	Total Nitrogen (µg/L)
Northern Rockies (15)	III	July 1 to September 30	25	275
Canadian Rockies (41)	III	July 1 to September 30	25	325
Idaho Batholith (16)	III	July 1 to September 30	25	275
Middle Rockies (17)	III	July 1 to September 30	30	300
Absaroka-Gallatin Volcanic Mountains (17i)	IV	July 1 to September 30	105	250
Northwestern Glaciated Plains (42)	III	June 16 to September 30	110	1300
Sweetgrass Upland (42l), Milk River Pothole Upland (42n), Rocky Mountain Front Foothill Potholes (42q), and Foothill Grassland (42r)	IV	July 1 to September 30	80	560
Northwestern Great Plains (43) and Wyoming Basin (18)	III	July 1 to September 30	150	1300
River Breaks (43c)	IV	See Endnote 5	See Endnote 5	See Endnote 5
*Non-calcareous Foothill Grassland (43s), Shields-Smith Valleys (43t), Limy Foothill Grassland (43u), Pryor-Bighorn Foothills (43v), and Unglaciated Montana High Plains (43o)**	IV	July 1 to September 30	33	440

Circular DEQ 12-A, p.3, Final July 2014 Edition.

In sum, Montana's numeric nutrient water quality criteria are based on a large body of scientific work, including EPA's nutrient guidance, years of sampling and research by DEQ, and scientific studies that show numeric criteria are necessary to protect the designated uses in Montana's streams.[35] Narrative criteria lack specificity whereas numeric nutrient criteria provide "distinct interpretations of acceptable and unacceptable conditions, form the foundation for responsible measurement of environmental quality, and reduce ambiguity for management and enforcement decisions."[36] The state's analysis and EPA's 2000 guidance established a firm scientific basis supporting Montana's decision to derive numeric nutrient criteria at the ecoregion level III scale.[37] Indeed, EPA found Montana's numeric nutrient criteria to be "scientifically defensible, well supported by the record, and consistent with Clean Water Act requirements" when approving numeric nutrient criteria for CWA purposes in 2015.[38] EPA has not disapproved

[35] *See* Technical Basis NNC 2008, 2013; *see also* EPA Nutrient Guidance.
[36] EPA Nutrient Guidance at 10.
[37] EPA Approval Letter 2015.
[38] *Id.* at 2.

Montana's numeric nutrient criteria since adoption in 2015 and therefore they are still applicable in Montana as a matter of federal law.

2. Montana's May 2025 Legislative Passage and Governor Gianforte's Signature of House Bill 664, House Bill 685, and House Bill 736

The Montana Legislature passed three bills that revised elements of Montana's water quality standards during the State's 2025 Legislative Session. Petitioners sent EPA Region 8 a letter dated April 30, 2025 detailing practical and legal issues with the aforementioned bills, and spoke with Region 8 officials during an April 30, 2025 meeting to urge EPA to exercise its CWA Section 303(c) authority and disapprove the bills seeking to amend state water quality standards as contrary to requirements of the CWA.[39] Montana Governor Gianforte signed those bills into state law during May 2025.

(a) House Bill 664 - Review of HB 664 demonstrates that each of the four qualifying criteria are satisfied under EPA's October 2012 "What is a New or Revised Water Quality Standard under CWA 303(c)(3)? Frequently Asked Questions" document.

1. The bill is legally binding, adopted via state law.
2. The bill seeks to eliminate reference to or application of previously-promulgated and EPA-approved numeric nutrient water quality standards.
3. The bill would eliminate numeric expressions of desired conditions through water quality criteria, and instead rely on a sole narrative standard of state law under ARM 17.30.637
4. The provision revises an existing water quality standard.

HB 664 is a blatant attempt to eliminate a well-documented, proven, and science-based approach to protecting designated uses of most Montana waterways with numeric nutrient criteria. Waterkeeper is unaware of a single instance across the Nation in which EPA has allowed a State to regress and remove a duly-promulgated and approved protective numeric criteria approach in favor of a less-protective, narrative criteria approach. As EPA knows, its own regulations for development of water quality standards requires states to adopt numeric criteria unless such criteria cannot be established.[40]

[39] *See* Letter, Upper Missouri Waterkeeper to EPA Region 8, "Ltr to R8 EPA re Summary of MDEQ CWA Implementation (April 30, 2025).pdf," April 30, 2025, attached hereto.
[40] 40 C.F.R. 131.11(b).

Moreover, EPA has already found that Montana's numeric water quality standards are necessary to address nutrient pollution in the state, protect designated uses, and are based on sound science. As EPA stated in its original Action Letter Approving Montana's Numeric Nutrient Criteria in 2015, "[t]he adopted water quality criteria…that are the subject of today's action are scientifically defensible, well supported by the record and consistent with CWA requirements."[41] Further, EPA determined that Montana's numeric nutrient criteria "will protect aquatic life and recreational designated uses and are based on a strong scientific rationale that is consistent with the EPA guidance on deriving NNC using scientifically defensible methods," and therefore approved such numeric criteria in 2015.[42] When the State adopted a proposed narrative translator approach to nutrient water quality standards in 2021, EPA determined that such effort was both a revision of a WQS and, in a series of letters dated May 10, 2022, disapproved the majority of new state law purporting to eliminate numeric nutrient standards.[43]

Specifically, EPA disapproved the previous state attempt under Senate Bill 358 of the 2021 Legislative Session, also seeking to eliminate numeric nutrient criteria, because it " revises the desired condition for the applicable waterbodies to be the condition described by the general narrative criteria (narrative criteria) only (i.e., no longer including the NNC) without adequate information to demonstrate that the narrative criteria alone protects the designated uses. The state's permitting record over the past two years demonstrates that the implementation of the narrative criteria alone does not protect the designated use, as required by 40 C.F.R. § 122.44(d)(1). Additionally, the narrative criteria alone, as informed by the record supporting the NNC, does not contain sufficient parameters or constituents to protect the designated use consistent with 40 C.F.R. § 131.11(a)(1). EPA is disapproving Section 3 and Section 4 of SB 358

[41] *See* EPA 2015 Action Letter on Montana's Numeric Nutrient Criteria at 2.
[42] *Id.* at 12.
[43] *See* EPA May 10, 2022 Letters to Montana DEQ, Ref: 8WD-IO.

because these sections revise the desired condition for the applicable waterbodies by mandating removal of any reference in Montana's regulations to the NNC by the Board (Section 3) and MDEQ (Section 4) without ensuring that the remaining criteria contain sufficient parameters or constituents to protect the designated use consistent with 40 C.F.R. § 131.11(a)(1). This deficiency is documented in the state's permitting record over the past two years. EPA is also disapproving Montana's new nondegradation provision in Section 7 because it is inconsistent with 40 C.F.R. § 131.12(a)(2)." See EPA Letter to DEQ, May 10, 2022, Ref: 8WD-IO.

HB 664 is wholly divorced from requirements of the CWA or EPA regulations. Congress directed states to establish water quality standards that "consist of the designated uses of the navigable waters involved and the water quality criteria for such waters based upon such uses."[44] EPA regulations specify that "[s]uch criteria must be based on sound scientific rationale and must contain sufficient parameters or constituents to protect the designated use."[45] Because water quality criteria must be set at a level that protects the designated use, economic factors "are irrelevant" and states should not take them into account.[46]

Water quality standards under § 1313 are standards for protecting waterway health and designated uses. And, as EPA well-knows, science-based and protective water quality standards are foundational to sound implementation of the CWA affecting primary methods of restoring and protecting our waterways: pollutant discharge elimination permits and the development of Total Maximum Daily Load ("TMDL") cleanup plans. Congress prohibited all pollutant discharges to waterways absent a permit, and water quality standards are a primary driver of those permit requirements.[47] A TMDL must be designed to ensure that a waterbody is returned

[44] 33 U.S.C. § 1313(c)(2)(A); 40 C.F.R. § 131.2.
[45] 40 C.F.R. § 131.11(a)(1).
[46] *Miss. Comm'n on Natural Res. v. Costle,* 625 F.2d 1269, 1277 (5th Cir. 1980).
[47] 33 U.S.C. §§ 1311(b)(1)(c) and 1342 (a)(1). *See also,* 40 C.F.R. § 122.44(d).

to meeting water quality standards,[48] thus the importance of a science-based goal post for water quality protection. Repudiating this framework, HB 664 repeals the Montana water quality standard that actually protects designated uses from nutrient pollution and proposes using a single narrative standard that both the State and EPA previously found inadequate to protect uses of state water. Thus EPA must disapprove HB 664 of the 2025 Legislative Session for all CWA purposes.

(b) HB 685 - Review of HB 685 demonstrates that each of the four qualifying criteria are satisfied under EPA's October 2012 "What is a New or Revised Water Quality Standard under CWA 303(c)(3)? Frequently Asked Questions" document.

1. The bill is legally binding, adopted via state law.
2. The bill seeks to amend and revise Montana's adopted antidegradation policy and its requirements for reviewing proposed discharges of pollutants.
3. The bill would revise instream level of protection afforded waters when antidegradation policy is applied to review a proposed activity.
4. The bill revises Montana's EPA-approved antidegradation policy.

First, this bill effects a denotation change, amending the phrase "nondegradation analysis" for "feasibility analysis." The denotation change is itself repugnant to the CWA as antidegradation is a defined term, whereas feasibility denotes a different set of considerations. Moreover, when states apply antidegradation policy to permitting decisions courts often look to the statute's plain language to infer whether a decisionmaker has appropriately conditioned a proposed activity. Here, revising antidegradation to become a test of feasibility is repugnant to the purposes of the CWA, and has the likelihood of diminishing the scope and effectiveness of antidegradation policy across Montana's waters.

As applied to amending 75-5-303, MCA, the bill also revises antidegradation policy when it inverts the presumption against allowing degradation - a requirement of the CWA - and instead revises the language to presumptively allow degradation when criteria are fulfilled. This

[48] 33 U.S.C. § 1313(d).

revision effects a reversal of the CWA's statutory intent of eliminating discharges of pollutants, converting it into a lesser threshold only requiring satisfaction of criteria to sanction degradation. And, equally troublesome, section 303(3)(b) removes the existing required burden of proof on an applicant and the decision-maker to demonstrate that the "benefit of the development exceeds the costs to society of allowing degradation of high-quality waters". Eliminating this burden of proof under existing policy makes this subsection less-protective of uses of water, local water quality, and assimilative capacity by transforming the policy into an exercise solely considering whether the "proposed project will result in important economic or social development", without weighing against the costs to society. The existing language is both protective and aligned with CWA intent and EPA's antidegradation rules, whereas the revisions lessen the evidentiary burdens and process required to authorize degradation, and therefore are by their nature and diction less-protective. For these reasons EPA must both consider HB 685 a revision of water quality standards and take action to disapprove those revisions for all CWA purposes.

(c) HB 736 - expanding Montana's use of nutrient credit trading and nutrient offsets, amending antidegradation and impaired waters requirements.

Review of HB 736 demonstrates that each of the four qualifying criteria are satisfied under EPA's October 2012 "What is a New or Revised Water Quality Standard under CWA 303(c)(3)? Frequently Asked Questions" document.

1. The bill is legally binding, adopted via state law.
2. The bill affects the implementation of antidegradation requirements when it expands the statutory authority for MDEQ to issue NPDES permits with terms and conditions for nutrient pollutants untethered to assumptions and requirements of existing impairment determinations and Total Maximum Daily Loads, and also sanctions the addition of pollutants in quantities that may cause or contribute to violations of standards and the non-attainment of existing or designated uses by virtue of authorizing speculative nutrient best management practices at locations other than the waterbody segment receiving pollutant discharges.
3. The bill would revise instream level of protection afforded waters when antidegradation policy is applied to review a proposed activity.
4. The bill revises and expands Montana's existing and EPA-approved nutrient credit trading policy, and also establishes de facto exclusions for NPDES permittees that choose to utilize nutrient offsets from otherwise applicable Tier II antidegradation requirements.

The CWA prohibits the discharge from a "point source" unless that discharge is in compliance with an NPDES permit. 33 U.S.C. § 1311(a); 40 C.F.R. § 122.1(b)(1). Any NPDES permit issued must include effluent limitations in compliance with the CWA. 33 U.S.C. § 1311(b)(1)(A); 40 C.F.R. § 125.3(a). Section 302(a) of the CWA requires the imposition of WQBEL when TBELs applicable to a point source are insufficient to achieve and maintain water quality standards. 33 U.S.C. § 1312(a). EPA has delegated oversight and implementation of the CWA to the State of Montana, and thus DEQ is responsible for management of its CWA program in a manner consistent with baseline requirements of the CWA.

HB 736 expands the State's existing nutrient credit trading policy to include new nutrient "offsets" authority. Specifically, the bill authorizes DEQ to issue NPDES permits with effluent limits tiered to a suite of nutrient offset requirements, and (a) such offsets need not be within the same 12-unit HUC watershed, (b) may be up or down gradient of the discharge, and (c) delegates authority from DEQ to the applicant to "quantify and verify reductions from projects". The use of offsets is greater in scope than previously sanctioned under Montana's nutrient credit trading policy, and calls into question the scientific basis of any of bills existing methodologies for measuring offsets, such as the defensibility of an offset of 50% being allowed from a down-gradient, nonpoint source discharge. The bill contains zero scientific assurances demonstrating the statutorily defined measurements for offsets are capable of furthering the purposes of Antidegradation Policy, or are adequate to protect a waterbody receiving NPDES permitted discharges from causing or contributing to violations of standards, non-attainment of uses of that waterbody, or capable of satisfying the requirements and assumptions of any impairment and/or wasteload allocation. Of particular concern is how the use of nutrient offsets under the bill conflicts with the language of 40 C.F.R. 131.12(a)(2), which requires that "the State shall assure

that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control." Indeed, the bill's expanded use of nutrient offsets can "satisfy permitting requirements, including effluent limitations [.and] waste load allocations," and in so doing directly revises the scope and requirements of Montana's antidegradation policy, triggering EPA's duty to review HB 736. The bill lacks any explanation of how its directives fulfill antidegradation requirements, or would, upon implementation, provide such a necessary demonstration. And because the bill purports to statutorily define the terms and measurement for use of nutrient offsets to deviate from antidegradation requirements, EPA can and must determine whether the bill is compliant with CWA requirements.

Summary:

Each of the bills herein has an effective date as of passage and signing by the Governor and requires DEQ to implement a narrative approach to nutrient pollution control and revise its implementation of antidegradation policy. These sections violate the CWA.

While Petitioner notes that DEQ must, under federal law, implement the EPA-approved nutrient criteria in Circular 12A, Waterkeeper is also aware from experience that DEQ has proven unwilling to perform its clear legal duty contrary to State Legislative directives, despite federal law requirements, and therefore it is very likely that lawful point source control of nutrient pollution through federally-applicable numeric nutrient criteria has ceased. To this point, DEQ has already - even prior to the passage of HB 664 - refused to apply numeric nutrient criteria in CWA decisions despite EPA's declaration that previously passed Senate Bill 358 was

unlawful, contrary to the CWA, and disapproved for any CWA purpose.[49] EPA regulations requires states to adopt an antidegradation policy and implementation procedures consistent with 40 CFR § 131.12(a)(1-4). Here, no findings were created, EPA was not given an opportunity to review and take action on the nondegradation policy changes before effective date, and the public was precluded from substantively participating in the development and any subsequent revisions to Montana's nondegradation policy. Furthermore, because each of the bills discussed herein lack any written findings to support their revisions of water quality standards, meaning nutrient management under the CWA in the State of Montana is entering a period of illusory hopes and prayers, as opposed to science-based and enforceable conditions capable of maintaining and protecting uses of water and water quality necessary to support those uses.

Given the long saga, now over 10 years, during which Montana DEQ has adopted numeric nutrient criteria but then largely failed to implement numeric nutrient criteria, including the unfortunate state of affairs presented in each of the three bills discussed herein, time is of the essence and EPA must act quickly to protect Montana waters from unlawful pollution by acting on this petition within 90 days as contemplated under Section 303(c).

Conclusion

The results intended by and process for adopting HB 664, HB 685, and HB 736 under Montana law are contrary to requirements of the CWA and EPA's rules. Each of these laws fly in the face of robust scientific record supporitng numeric nutrient criteria as protective means for maintaining and restoring water quality and uses of water in Montana. Further, revisions to Montana's antidegradation policy lack a scientific basis and do not provide any evidentiary

[49] *See attached*: Letter from DEQ to Upper Missouri Waterkeeper and the Big Hole River Foundation dated April 14, 2025, refusing to apply numeric nutrient criteria to a petition requesting an impairment determination for nutrient degradation of Montana's Big Hole River.

support for how their revisions satisfy CWA requirements and comply with the goal of eliminating discharges of pollutants to waterways and maintaining and protecting the chemical, physical, and biological integrity of surface water.

Waterkeeper petitions EPA to, within 90 days of receipt of this petition or 90 days within the time that it was provided notice of the legislation herein by the State of Montana, whichever is shorter, make the determinations requested *supra* to disapprove HB 664, HB 685, and HB 736's changes to Montana's water quality standards, and to promulgate federal regulations applicable to Montana setting forth revised numeric nutrient water quality standards and a compliant antidegradation policy as necessary to satisfy requirements of the CWA.

Respectfully submitted-

Guy Alsentzer, Executive Director
Upper Missouri Waterkeeper
24 S. Willson Ave, ste. 6-7
Bozeman, MT 59715

Dated this day, the 4th day of June, 2025

AN ACT REVISING THE NUTRIENT CRITERIA FOR MONTANA WATER QUALITY STANDARDS; REMOVING REFERENCES TO NUMERIC NUTRIENT STANDARDS IN ADMINISTRATIVE RULE; REPEALING BASE NUMERIC NUTRIENT STANDARDS; PROVIDING DIRECTIONS TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; PROVIDING RULEMAKING AUTHORITY; ELIMINATING THE NUTRIENT WORK GROUP; AMENDING SECTION 75-5-103, MCA; REPEALING SECTION 75-5-321, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

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

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

WHEREAS, from 2011 through 2014, members of the Nutrient Work Group and the public endeavored to develop rules to govern numeric nutrient criteria, rules, and guidance. The work involved interactions between the DEQ and EPA on the proposed rules, variances, and guidance and led to the adoption of rule packages by the Board of Environmental Review. Even though the EPA had clarity on the proposals before they were finalized and had indicated its support for Montana's approach, the agency adopted a rule that made it impossible for Montana's rules and variances from working as intended. The EPA never approved a general variance for private sector dischargers; and

WHEREAS, these numeric nutrient standards were not explicitly required by law, and many states have not adopted numeric nutrient standards for all of their bodies of water; and

WHEREAS, the 2021 Montana Legislature, recognizing this, chose to re-establish narrative nutrient standards in Senate Bill 358; and

WHEREAS, the Nutrient Work Group, which included participants from the DEQ and EPA, worked diligently to assess the viability of a general variance to allow compliance with numeric standards and to develop narrative standards without widespread economic consequences, but to no avail; and

WHEREAS, the failure to adopt narrative nutrient standards means that Montana again operates under the old, unattainable numeric nutrient standards; and

WHEREAS, Montana's numeric nutrient standards and variances provided for in law and in ARM 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, 17.30.627, 17.30.628, 17.30.629, 17.30.660, 17.30.702, 17.30.715, and 17.30.1388 have subsequently proven to be unachievable and burdensome, especially for Montana's municipal wastewater treatment systems.

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

Section 1. Department to amend rules. The department shall amend ARM 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, 17.30.627, 17.30.628, 17.30.629, 17.30.702, and 17.30.715 to delete all references to department circular DEQ-12A, base numeric nutrient standards, and nutrient standards variances.

Section 2. Directions to department. The department shall:

(1) repeal department circular DEQ-12A Montana base numeric nutrient standards as adopted into administrative rule on August 8, 2014; and

(2) amend all guidance, assessment methods, total maximum daily load calculations, and other policies and procedures to eliminate reference to or reliance on department circular DEQ-12A.

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

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

(1) "Associated supporting infrastructure" means:

(a) electric transmission and distribution facilities;

(b) pipeline facilities;

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

(d) rail transportation;

(e) aqueducts and diversion dams;

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

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

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

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

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

(5) (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.

(6) "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).

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

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

(9) "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.

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

(a) generating electricity;

(b) producing gas derived from coal;

(c) producing liquid hydrocarbon products;

(d) refining crude oil or natural gas;

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

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

(11) "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.

(12) "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 department'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.

(13) "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.

(14) "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.

(15) "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.

(16) "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.

(17) "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.

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

(19) "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.

(20) "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 department.

~~(21) "Nutrient work group" means an advisory work group, convened by the department, representing publicly owned and privately owned point sources of pollution, nonpoint sources of pollution, and other interested parties that will advise the department on nutrient standards, the implementation of those standards, and associated economic impacts.~~

~~(22)~~(21)"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.

~~(23)~~(22)"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 department under the provisions of 75-5-316 and approved by the legislature.

~~(24)~~(23)"Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.

~~(25)~~(24)"Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

~~(26)~~(25)"Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

~~(27)~~(26)"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.

~~(28)~~(27)(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) The term does not include:

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

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

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

(c) Contamination referred to in ~~subsections (28)(b)(iii) and (28)(b)(iv)~~ subsection (27)(b)(iii) does not require a mixing zone.

~~(29)~~(28)"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.

~~(30)~~(29)"Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

~~(31)~~(30)"Standard of performance" means a standard adopted by the department 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.

~~(32)~~(31)(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.

~~(33)~~(32)"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.

~~(34)~~(33)"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.

~~(35)~~(34)"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.

~~(36)~~(35)"Treatment works" means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.

~~(37)~~(36)"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.

~~(38)~~(37)"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.

~~(39)~~(38)"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.

~~(40)~~(39)"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.

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

(1) "Associated supporting infrastructure" means:

(a) electric transmission and distribution facilities;

(b) pipeline facilities;

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

(d) rail transportation;

(e) aqueducts and diversion dams;

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

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

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

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

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

(5) (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.

(6) "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).

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

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

(9) "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.

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

(a) generating electricity;

(b) producing gas derived from coal;

(c) producing liquid hydrocarbon products;

(d) refining crude oil or natural gas;

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

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

(11) "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.

(12) "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 department'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.

(13) "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.

(14) "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.

(15) "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.

(16) "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.

(17) "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.

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

(19) "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.

(20) "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 department.

~~(21) "Nutrient work group" means an advisory work group, convened by the department, representing publicly owned and privately owned point sources of pollution, nonpoint sources of pollution, and other interested parties that will advise the department on nutrient standards, the implementation of those standards, and associated economic impacts.~~

~~(22)~~(21)"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.

~~(23)~~(22)"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 department under the provisions of 75-5-316 and approved by the legislature.

~~(24)~~(23)"Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.

~~(25)~~(24)"Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

~~(26)~~(25)"Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

~~(27)~~(26)"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.

~~(28)~~(27)(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) The term does not include:

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

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

(iii) 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;

(iv) contamination of ground water within the boundaries of an underground mine using in situ coal

gasification and operating in accordance with a permit issued under 82-4-221;

(c) Contamination referred to in subsections ~~(28)(b)(iii) and (28)(b)(iv)~~ (27)(b)(iii) and (27)(b)(iv) does not require a mixing zone.

~~(29)~~(28)"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.

~~(30)~~(29)"Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

~~(31)~~(30)"Standard of performance" means a standard adopted by the department 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.

~~(32)~~(31)(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.

~~(33)~~(32)"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.

~~(34)~~(33)"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.

~~(35)~~(34)"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.

~~(36)~~(35)"Treatment works" means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.

~~(37)~~(36)"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.

~~(38)~~(37)"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.

~~(39)~~(38)"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.

~~(40)~~(39)"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 4. Repealer. The following section of the Montana Code Annotated is repealed:

75-5-321. Transition for nutrient standards.

Section 5. Repealer. ARM 17.30.660 and 17.30.1388 are repealed.

Section 6. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 75, chapter 5, part 3, and the provisions of Title 75, chapter 5, part 3, apply to [section 2].

Section 7. Effective date. [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,

HB 664, originated in the House.

_____

Chief Clerk of the House

_____

Speaker of the House

Signed this _____day

of_____, 2025.

_____

President of the Senate

Signed this _____day
of_____, 2025.

HOUSE BILL NO. 664

INTRODUCED BY B. MERCER, J. ESP

AN ACT REVISING THE NUTRIENT CRITERIA FOR MONTANA WATER QUALITY STANDARDS; REMOVING REFERENCES TO NUMERIC NUTRIENT STANDARDS IN ADMINISTRATIVE RULE; REPEALING BASE NUMERIC NUTRIENT STANDARDS; PROVIDING DIRECTIONS TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; PROVIDING RULEMAKING AUTHORITY; ELIMINATING THE NUTRIENT WORK GROUP; AMENDING SECTION 75-5-103, MCA; REPEALING SECTION 75-5-321, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

AN ACT PROVIDING A FEASIBILITY ALLOWANCE TO MEET THE WATER QUALITY NONDEGRADATION POLICY; REVISING A DEFINITION; AMENDING ADMINISTRATIVE RULES; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 75-5-103, 75-5-301, 75-5-303, 75-5-316, 75-5-516, AND 75-5-605, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 75-5-103, MCA, is amended to read:

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

(1) "Associated supporting infrastructure" means:

(a) electric transmission and distribution facilities;

(b) pipeline facilities;

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

(d) rail transportation;

(e) aqueducts and diversion dams;

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

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

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

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

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

(5) (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.

(6) "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).

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

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

(9) "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.

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

(a) generating electricity;

(b) producing gas derived from coal;

(c) producing liquid hydrocarbon products;

(d) refining crude oil or natural gas;

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

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

(11) "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.

(12) "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 department'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.

(13) "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.

(14) "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.

(15) "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~~ a feasibility allowance.

(16) "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.

(17) "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.

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

(19) "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.

(20) "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 department.

(21) "Nutrient work group" means an advisory work group, convened by the department, representing publicly owned and privately owned point sources of pollution, nonpoint sources of pollution, and other interested parties that will advise the department on nutrient standards, the implementation of those

standards, and associated economic impacts.

(22) "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.

(23) "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 department under the provisions of 75-5-316 and approved by the legislature.

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

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

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

(27) "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.

(28) (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) The term does not include:

(i) a discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution

discharge permit rules adopted by the department under this chapter;

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

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

(c) Contamination referred to in subsections (28)(b)(iii) and (28)(b)(iv) does not require a mixing zone.

(29) "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.

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

(31) "Standard of performance" means a standard adopted by the department 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.

(32) (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.

(33) "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.

(34) "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.

(35) "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.

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

(37) "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.

(38) "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.

(39) "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.

(40) "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.

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

(1) "Associated supporting infrastructure" means:

(a) electric transmission and distribution facilities;

(b) pipeline facilities;

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

(d) rail transportation;

(e) aqueducts and diversion dams;

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

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

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

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

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

(5) (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.

(6) "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).

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

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

(9) "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.

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

(a) generating electricity;

(b) producing gas derived from coal;

(c) producing liquid hydrocarbon products;

(d) refining crude oil or natural gas;

(e) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax

incentive pursuant to Title 15, chapter 70, part 5; or

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

(11) "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.

(12) "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 department'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.

(13) "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.

(14) "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.

(15) "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~~ a feasibility allowance.

(16) "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.

(17) "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.

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

(19) "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.

(20) "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 department.

(21) "Nutrient work group" means an advisory work group, convened by the department, representing publicly owned and privately owned point sources of pollution, nonpoint sources of pollution, and other interested parties that will advise the department on nutrient standards, the implementation of those standards, and associated economic impacts.

(22) "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.

(23) "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 department under the provisions of 75-5-316 and approved by the legislature.

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

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

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

(27) "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.

(28) (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) The term does not include:

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

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

(iii) 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;

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

(c) Contamination referred to in subsections (28)(b)(iii) and (28)(b)(iv) does not require a mixing zone.

(29) "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.

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

(31) "Standard of performance" means a standard adopted by the department 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.

(32) (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.

(33) "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.

(34) "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.

(35) "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.

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

(37) "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.

(38) "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.

(39) "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.

(40) "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 2. Section 75-5-301, MCA, is amended to read:

"**75-5-301. Classification and standards for state waters.** Consistent with the provisions of 80-15-201 and this chapter, the department shall:

(1) establish the classification of all state waters in accordance with their present and future most beneficial uses, creating an appropriate classification for streams that, due to sporadic flow, do not support an aquatic ecosystem that includes salmonid or nonsalmonid fish;

(2) formulate and adopt standards of water quality, considering the economics of waste treatment and prevention. When rules are adopted regarding temporary standards, they must conform with the requirements of 75-5-312. Standards must meet the following requirements:

(a) for carcinogens, the water quality standard for protection of human health must be the value associated with an excess lifetime cancer risk level, assuming continuous lifetime exposure, not to exceed 1 x 10 -3 in the case of arsenic and 1 x 10 -5 for other carcinogens. However, if a standard established at a risk level of 1 x 10 -3 for arsenic or 1 x 10 -5 for other carcinogens violates the maximum contaminant level obtained from 40 CFR, part 141, then the maximum contaminant level must be adopted as the standard for that carcinogen.

(b) standards for the protection of aquatic life do not apply to ground water.

(3) review, from time to time at intervals of not more than 3 years and, to the extent permitted by this chapter, revise established classifications of waters and adopted standards of water quality;

(4) adopt rules governing the granting of mixing zones, requiring that mixing zones granted by the department be specifically identified and requiring that mixing zones have:

(a) the smallest practicable size;

(b) a minimum practicable effect on water uses; and

(c) definable boundaries;

(5) adopt rules implementing the nondegradation policy established in 75-5-303, including but not limited to rules that:

(a) provide a procedure for department review and authorization of ~~degradation~~ a feasibility allowance;

(b) establish criteria for the following:

(i) determining important economic or social development; and

(ii) weighing the social and economic importance to the public of allowing the proposed project against the cost to society associated with a loss of water quality;

(c) establish criteria for determining whether a proposed activity or class of activities, in addition to those activities identified in 75-5-317, will result in nonsignificant changes in water quality for any parameter in order that those activities are not required to undergo review under 75-5-303(3). These criteria must be established in a manner that generally:

(i) equates significance with the potential for harm to human health, a beneficial use, or the environment;

(ii) considers both the quantity and the strength of the pollutant;

(iii) considers the length of time the degradation will occur;

(iv) considers the character of the pollutant so that greater significance is associated with carcinogens and toxins that bioaccumulate or biomagnify and lesser significance is associated with substances that are less harmful or less persistent.

(d) provide that changes of nitrate as nitrogen in ground water are nonsignificant if the discharge will not cause degradation of surface water and the predicted concentration of nitrate as nitrogen at the boundary of the ground water mixing zone does not exceed:

(i) 7.5 milligrams per liter from sources other than sewage;

(ii) 5.0 milligrams per liter from sewage discharged from a system that does not use level two treatment in an area where the ground water nitrate as nitrogen is 5.0 milligrams per liter or less;

(iii) 7.5 milligrams per liter from sewage discharged from a system using level two treatment, which must be defined in the rules; or

(iv) 7.5 milligrams per liter from sewage discharged from a system in areas where the ground water nitrate as nitrogen level exceeds 5.0 milligrams per liter primarily from sources other than human waste; and

(e) for septic system discharges that are not subject to ground water permitting requirements under 75-5-401, establish criteria to determine when the discharges result in nonsignificant changes in surface water quality in order that those discharges are not required to undergo review under 75-5-303(3) and no further analysis under law or rule is required. The criteria must:

(i) be adopted by rule before July 1, 2024; and

(ii) be developed in a manner that generally considers soil type, mixing zone dilution and nitrogen credits, horizontal distance between the discharge and the surface water in the direction of ground water flow, and elevation, including:

(A) adopt surface water impacts for low flow conditions based on mixing zone dilution concentrations and other credits for nitrogen;

(B) credit nitrogen degradation at the drainfield and riparian zone attenuation based on soil type;

(C) exempt surface water body impacts when drainfield is lower in elevation than the waterbody;

(D) limit the adjacent to surface water trigger analysis to a maximum of 1/4 or 1/2 mile from the drainfield to a surface water, depending on soil type; and

(E) create nonsignificant surface water impact categories of 500 or more feet from the surface water that consider soil texture, ground water depths and other pertinent information.

(6) to the extent practicable, ensure that the rules adopted under subsection (5) establish objective and quantifiable criteria for various parameters. These criteria must, to the extent practicable, constitute guidelines for granting or denying applications for authorization to degrade high-quality waters under the policy established in 75-5-303(2) ~~and (3)~~.

(7) adopt rules to implement this section."

Section 3. Section 75-5-303, MCA, is amended to read:

"**75-5-303. Nondegradation policy.** (1) Existing uses of state waters and the level of water quality necessary to protect those uses must be maintained and protected.

(2) Unless authorized by the department under subsection (3) or exempted from review under 75-

5-317, the quality of high-quality waters must be maintained.

(3) The department may ~~not authorize degradation of~~ allow lower water quality through a feasibility allowance in high-quality waters ~~unless~~ when it has been affirmatively demonstrated by a preponderance of evidence to the department that:

(a) ~~degradation~~ a feasibility allowance is necessary because there are no economically, environmentally, and technologically feasible modifications to the proposed project that would result in no degradation;

(b) the proposed project will result in important economic or social development ~~and that the benefit of the development exceeds the costs to society of allowing degradation of~~ in the area that the high-quality waters are located;

(c) existing and anticipated use of state waters will be fully protected; and

(d) the least degrading water quality protection practices determined by the department to be economically, environmentally, and technologically feasible will be fully implemented by the applicant prior to and during the proposed activity.

(4) The department shall issue a preliminary decision either denying or authorizing ~~degradation~~ the feasibility allowance and shall provide public notice and a 30-day comment period prior to issuing a final decision. The department's preliminary and final decisions must include:

(a) a statement of the basis for the decision; and

(b) a detailed description of all conditions applied to ~~any authorization to degrade state waters~~ a feasibility allowance, including, when applicable, monitoring requirements, required water protection practices, reporting requirements, effluent limits, designation of the mixing zones, the limits of ~~degradation~~ the authorized feasibility allowance, and methods of determining compliance with the ~~authorization for degradation~~ feasibility allowance.

(5) An interested person wishing to challenge a final department decision may request a hearing before the board within 30 days of the final department decision. The contested case procedures of Title 2, chapter 4, part 6, apply to a hearing under this section.

(6) Periodically, but not more often than every 5 years, the department may review ~~authorizations to degrade~~ feasibility allowances for state waters. Following the review, the department may, after timely notice

and opportunity for hearing, modify the ~~authorization~~ feasibility allowance if the department determines that an economically, environmentally, and technologically feasible modification to the development exists. The decision by the department to modify ~~an authorization~~ a feasibility allowance may be appealed to the board.

(7) The department may not issue ~~an authorization to degrade~~ a feasibility allowance for state waters that are classified as outstanding resource waters.

(8) The department shall adopt rules to implement this section."

Section 4. 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~~ a feasibility allowance under 75-5-303 in outstanding resource waters; or

(b) allow a new or increased point source discharge that would result in a 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) other factors that indicate outstanding environmental or economic values not specifically mentioned in this subsection (4).

(5) Before accepting a petition, the department shall:

(a) publish a notice and brief description of the petition in a daily newspaper of general circulation in the area affected and make copies of the proposal available to the public. The cost of publication must be paid by the petitioner.

(b) provide for a 30-day written public comment period regarding whether the petition contains

sufficient credible information, as provided in subsection (3)(b), prior to the hearing required in subsection (5)(c);

(c) hold a public hearing regarding the petition and its contents and allow further written and oral testimony at the hearing;

(d) issue a proposed decision, including:

(i) the written finding provided for in subsection (3)(c); and

(ii) the department's acceptance or rejection of the petition;

(e) provide for a 30-day public comment period regarding the department's proposed decision; 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~~ a feasibility allowance 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."

Section 5. Section 75-5-516, MCA, is amended to read:

"**75-5-516. Fees authorized for recovery -- process -- rulemaking.** (1) Except as provided in subsections (12) and (13), the department shall by rule prescribe fees sufficient to cover the department's documented costs, both direct and indirect, of:

(a) reviewing and acting upon an application for a permit, permit modification, permit renewal, certificate, license, or other authorization required by rule under 75-5-201 or 75-5-401;

(b) reviewing and acting upon a petition for a ~~degradation~~ feasibility allowance under 75-5-303;

(c) reviewing and acting upon an application for a permit, certificate, license, or other authorization for which an exclusion is provided by rule from the permitting requirements established under 75-5-401;

(d) enforcing the terms and conditions of a permit or authorization identified in subsections (1)(a) through (1)(c). If the permit or authorization is not issued, the department shall return this portion of any application fee to the applicant.

(e) conducting compliance inspections and monitoring effluent and ambient water quality; and

(f) preparing water quality rules or guidance documents.

(2) Except as provided in subsection (12), the rules promulgated under this section must include:

(a) a fee on all applications for permits or authorizations, as identified in subsections (1)(a) through (1)(c), that recovers to the extent permitted by this subsection (2) the department's cost of reviewing and acting upon the applications. This fee may not be more than $5,000 per discharge point for an application addressed under subsection (1), except that an application with multiple discharge points may be assessed a lower fee for those points according to rule.

(b) an annual fee to be assessed according to the volume and concentration of waste discharged into state waters. The annual fee may not be more than $3,000 per million gallons discharged per day on an annual average for any activity under permit or authorization, as described in subsection (1), except that:

(i) a permit or authorization with multiple discharge points may be assessed a lower fee for those points according to rule; and

(ii) a facility that consistently discharges effluent at less than or equal to one-half of its effluent limitations and that is in compliance with other permit requirements, using the previous calendar year's discharge data, is entitled to a 25% reduction in its annual permit fee. Proportionate reductions of up to 25% of the permit fee may be given to facilities that consistently discharge effluent at levels between 50% and 100% of their effluent limitations. However, a new permittee is not eligible for a fee reduction in its first year of operation, and a permittee with a violation of any effluent limit during the previous calendar year is not eligible for a fee reduction for the following year.

(3) To the extent permitted under subsection (2)(b), the annual fee must be sufficient to pay the department's estimated cost of conducting all tasks described under subsection (1) after subtracting:

(a) the fees collected under subsection (2)(a);

(b) state general fund appropriations for functions administered under this chapter; and

(c) federal grants for functions administered under this chapter.

(4) For purposes of subsection (3), the department's estimated cost of conducting the tasks described under subsection (1) is the amount authorized by the legislature for the department's water quality discharge permit programs.

(5) If the applicant or holder fails to pay a fee assessed under this section or rules adopted under this section within 90 days after the date established by rule for fee payment, the department may:

(a) impose an additional assessment consisting of not more than 20% of the fee plus interest on the required fee computed as provided in 15-1-216; or

(b) suspend the permit or exclusion. The department may lift the suspension at any time up to 1 year after the suspension occurs if the holder has paid all outstanding fees, including all penalties, assessments, and interest imposed under subsection (5)(a).

(6) Fees collected pursuant to this section must be deposited in an account in the special revenue fund type pursuant to 75-5-517.

(7) The department shall give written notice to each person assessed a fee under this section of the amount of fee that is assessed and the basis for the department's calculation of the fee. This notice must be issued at least 30 days prior to the due date for payment of the assessment.

(8) A holder of or an applicant for a permit, certificate, or license may appeal the department's fee assessment to the board within 20 days after receiving written notice of the fee determination under subsection (7). The appeal must include a written statement detailing the reasons that the permitholder or applicant considers the department's fee assessment to be erroneous or excessive.

(9) If part of the department's fee assessment is not in dispute in an appeal filed under subsection (8), the undisputed portion of the fee must be paid to the department upon written request of the department.

(10) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing before the board under this section.

(11) A municipality may raise rates to cover costs associated with the fees prescribed in this section for a public sewer system without the hearing required in 69-7-111.

(12) (a) The application fee assessed pursuant to this section for a suction dredge, as described in 82-4-310(2), may not be more than:

(i) $25 if it is owned and operated by a resident of this state; or

(ii) $100 if it is owned and operated by a nonresident of this state.

(b) The annual fee assessed pursuant to this section for a suction dredge, as described in 82-4-310(2), may not be more than:

(i) $25 if it is owned and operated by a resident of this state; or

(ii) $100 if it is owned and operated by a nonresident of this state.

(13) A county, an incorporated city or town, or a conservation district formed pursuant to Title 76, chapter 15, is not subject to fees for authorizations pursuant to 75-5-318 or certifications related to section 401 of the federal Clean Water Act, 33 U.S.C. 1341."

Section 6. Section 75-5-605, MCA, is amended to read:

"**75-5-605. Prohibited activity -- exemption.** (1) It is unlawful to:

(a) cause pollution, as defined in 75-5-103, of any state waters or to place or cause to be placed any wastes where they will cause pollution of any state waters. Any placement of materials that is authorized by a permit issued by any state or federal agency is not a placement of wastes within the prohibition of this subsection (1)(a) if the agency's permitting authority includes provisions for review of the placement of materials to ensure that it will not cause pollution of state waters.

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

(c) cause degradation of state waters without ~~authorization~~ a feasibility allowance pursuant to 75-5-303;

(d) violate any order issued pursuant to this chapter; or

(e) violate any provision of this chapter.

(2) Except for the permit exclusions identified in 75-5-401(5), it is unlawful to carry on any of the following activities without a current permit from the department:

(a) construct, modify, or operate a disposal system that discharges into any state waters;

(b) construct or use any outlet for the discharge of sewage, industrial wastes, or other wastes into any state waters; or

(c) discharge sewage, industrial wastes, or other wastes into any state waters.

(3) Activities associated with routine or periodic maintenance, repair, replacement, or operation of irrigation water conveyance systems, including activities associated with any constructed channel, canal, ditch, pipeline, or portion of any constructed channel, canal, ditch, or pipeline, are not prohibited activities under this chapter if the activities do not result in exceeding water quality standards for any receiving water outside the irrigation water conveyance system. The diversion of water in accordance with an existing water right or permit pursuant to Title 85, chapter 2, is not a prohibited activity under this chapter."

Section 7. Department to amend rules. The department shall amend ARM 17.30.707 and 17.30.708 to add references to feasibility allowances.

Section 8. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 9. Effective date. [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,

HB 685, originated in the House.

_____

Chief Clerk of the House

_____

Speaker of the House

Signed this _____day

of_____, 2025.

_____

President of the Senate

Signed this _____day
of_____, 2025.

HOUSE BILL NO. 685

INTRODUCED BY S. FITZPATRICK

AN ACT PROVIDING A FEASIBILITY ALLOWANCE TO MEET THE WATER QUALITY NONDEGRADATION POLICY; REVISING A DEFINITION; AMENDING ADMINISTRATIVE RULES; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 75-5-103, 75-5-301, 75-5-303, 75-5-316, 75-5-516, AND 75-5-605, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

AN ACT PROVIDING FOR NUTRIENT ~~POLLUTANT~~ LOADING OFFSETS, OFFSET AMOUNTS, AND TRADING CREDITS FOR WATER QUALITY DISCHARGE PERMITS; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Nutrient loading offsets and trading credits. (1) ~~A point source discharger permitted~~ Under a permit issued pursuant to ~~this part~~ 75-5-401, a point source discharger to state surface waters may receive ~~a~~ nutrient ~~pollutant~~ loading ~~offset~~ offsets or trading credits to ~~achieve~~ satisfy permitting requirements, including nutrient effluent limitations established pursuant to this part and nutrient effluent limitations derived from waste load allocations ~~set by:~~ established pursuant to 75-5-703.

~~(a) a total maximum daily load requirement established pursuant to 75-5-703; or~~

~~(b) a numeric nutrient effluent limitation established pursuant to this part.~~

~~(2) If the actions in subsections (1)(a) and (1)(b) decrease the nutrient loading in a watershed, the department may:~~

~~(a) issue or modify a discharge permit authorized pursuant to this part to allow discharges of nutrients to a receiving water body ; or~~

~~(b) authorize a reduction in nutrient loading from point and nonpoint pollution sources within the same 12-digit hydrologic unit code subbasin as designated by the United States geological survey.~~

(2) Nutrient loading offsets and trading credits may be authorized for increases in or continuation of nutrient discharges when a net decrease in nutrient loading within the United States geological survey-designated 12-digit hydrologic unit code subbasin, or immediately adjacent 12-digit hydrologic unit code subbasin when the project is in close proximity to the adjacent 12-digit hydrologic unit code subbasin, is achieved through reductions from other point sources or nonpoint sources within the subbasin, either up

gradient or down gradient of the applicant. The applicant shall quantify and verify reductions from projects based on the methodologies developed by the department pursuant to subsection (4) or based on sufficient and credible site-specific data and methodologies that are reviewed and accepted by the department.

(3) ~~A point source discharger permitted pursuant to this part may receive a nutrient pollutant loading offset due to a reduction in nutrient loading from a point or nonpoint source pollution discharger either up gradient or down gradient of the permitted point source discharger.~~ For reductions that satisfy subsections (2) and (4), ~~The~~ the offset or trading credit must be measured as ~~not less than~~:

(a) 100% of a reduction from point source ~~pollution~~ discharges;

(b) 80% of a reduction from an up-gradient, nonpoint source ~~pollution~~ discharge; or

(c) 50% of a reduction from a down-gradient, nonpoint source ~~pollution~~ discharge.

(4) (a) The department shall establish ~~statewide nutrient pollutant loading~~ acceptable methodologies, based on readily available watershed characteristics, to determine the reduction in nutrient loading for nonpoint sources ~~offset amount s for nonpoint pollution sources~~, including ~~offset amounts~~ for:

~~(a)~~(i) riparian fencing programs based on the number of ~~acres fenced~~ feet of streambank;

~~(b)~~(ii) riparian vegetation programs based on the number of acres vegetated;

~~(c)~~(iii) development of wetlands in areas of irrigation water return flows based on the number of acres associated with the return flows; or

~~(d)~~(iv) removal of septic systems based on the number and size of septic systems removed ~~; or~~.

~~(e)~~(b) ~~other~~ Other projects and methods may be ~~submitted~~ proposed by an applicant or permittee that are supported by science and data modeling~~, unless the amounts are~~ and are not contrary to existing ~~empirical~~ data.

(c) The department shall use the methodologies established pursuant to this subsection (4) unless there is clear and convincing evidence that the nutrient loading of the proposed action would be substantially different from that determined by the established methodologies.

Section 2. Directions to department. To implement the provisions of [section 1], the department shall amend:

(1) department circular DEQ-13, Montana's policy for nutrient trading, as adopted in December

2012; and

(2) ARM 17.30.1701.

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 75, chapter 5, part 4, and the provisions of Title 75, chapter 5, part 4, apply to [section 1].

Section 4. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 5. Effective date. [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,

HB 736, originated in the House.

_____

Chief Clerk of the House

_____

Speaker of the House

Signed this _____day

of_____, 2025.

_____

President of the Senate

Signed this _____day
of_____, 2025.

HOUSE BILL NO. 736

INTRODUCED BY S. FITZPATRICK

AN ACT PROVIDING FOR NUTRIENT POLLUTANT LOADING OFFSETS, OFFSET AMOUNTS, AND TRADING CREDITS FOR WATER QUALITY DISCHARGE PERMITS; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

April 30, 2025

***Sent via electronic mail to*: DeJong.Stephanie@epa.gov, laidlaw.tina@epa.gov, volk.everett@epa.gov, perkins.erin@epa.gov**

Stephanie DeJong, Clean Water Branch Manager
Tina Laidlaw, Region 8 Nutrients Coordinator
Everett Volk, Region 8 Legal Counsel
Erin Perkins, Region 8 Legal Counsel
Region 8 EPA

RE: Summary of Issues Relating to the State of Montana's Administration of Delegated Clean Water Act Authority for Discussion at 4.30.25 Meeting

Dear EPA Region 8:

Thank you for agreeing to the April 30, 2025 meeting between Region 8 EPA, Upper Missouri Waterkeeper, and the Big Hole River Foundation.

We want to take this opportunity - in advance of the meeting - to present you and your colleagues with more details of our concerns related both to the Montana Department of Environmental Quality's (MDEQ) specific decision denying a petition to list the Big Hole River as impaired by nutrients, and to related Clean Water Act implementation issues including those presently existing and arising from the 2025 Legislative Session.

By way of an executive summary, Upper Missouri Waterkeeper has serious concerns about:

- MDEQ's failure to faithfully apply Numeric Nutrient Criteria in its April 14, 2025 decision denying a petition to list the Big Hole River as impaired by nutrients;

- MDEQ's failure to utilize Numeric Nutrient Criteria in ongoing surface water assessments of applicable waters, including but not limited to the anticipated submission of a belated Integrated Report during FY2025;

- MDEQ's failure to timely renew NPDES permits and, where applicable, incorporate effluent limits reflecting Numeric Nutrient Criteria;

- **House Bill 664** - This bill has passed the Montana Legislature and is headed to the Governor's desk for signature. It explicitly eliminates dual Numeric Nutrient Criteria, including an immediate effective date, without any proposed replacement standard, representing a revision of water quality standards requiring EPA review and approval

(currently the only narrative nutrient criteria promulgated by MT are reflected in ARM 17.30.637 since EPA disapproved proposed narrative criteria by letter dated 5.10.2022);

- **House Bill 685** - This bill has passed the Montana Legislature and is headed to the Governor's desk for signature. It amends Montana's antidegradation policy to include a novel "feasibility" analysis for new or increased point-source discharges, and as such represents a revision of water quality standards requiring EPA review and approval;

- **House Bill 736** - This bill has passed the Montana Legislature and is headed to the Governor's desk for signature. It amends Montana's NPDES rules to allow for nutrient "offsets" for point source dischargers, beyond the scope of existing Circular DEQ-13/established nutrient credit trading policy, thus implicating delegated authority compliance under the 1974 MOU between EPA and the State of Montana, *see also* 40 CFR §§ 123.24, 123.25, 123.62(b)(2).

MDEQ Has Erroneously Refused to Apply Numeric Nutrient Criteria During Decision-Making Pursuant to 33 USC § 1313(d)

On April 14, 2025 Upper Missouri Waterkeeper and the Big Hole River Foundation provided EPA Region 8 a copy of the April 14, 2025 MDEQ decision denying a petition to list the Big Hole River as impaired by nutrients. The decision in question alleged that "[a]s a result of Senate Bill 358, passed during the 2021 Legislative Session [.] DEQ is unable to base nutrient assessments upon the numeric nutrient criteria found in Circular DEQ 12-A." This determination represents clear legal error, and an arbitrary and capricious decision, regarding implementation of CWA requirements for water quality standards.

EPA, however, has already squarely addressed the binding nature of Montana's numeric nutrient criteria for all CWA purposes. On May 10, 2022 EPA sent MDEQ three letters Ref: 8WD-IO, concerning the validity of Senate Bill 358 for Clean Water Act purposes. In its May 10, 2022 Action Letter on SB 358 EPA disapproved:

> (1) Section 2(1) of SB 358 specifying that Montana's numeric nutrient criteria (NNC) contained in MDEQ's Department Circular DEQ-12A cannot be used for permitting purposes;
>
> (2) Section 3 of SB 358 which mandates the removal of all references to the NNC and general variances by the Board of Environmental Review (Board);
>
> (3) Section 4 of SB 358 which mandates the removal of all references to the NNC and general variances by MDEQ; and
>
> (4) Section 7 of SB 358 specifying changes to Montana's antidegradation (nondegradation) program.

Therefore, these revised and new WQS cannot be used for any CWA purpose.

Pages 1-2, EPA Letter Disapproving SB358 (1/3). (emphasis added).

Therefore, the issue before Region 8 EPA today is clear: a state with delegated authority to implement requirements of the CWA is refusing to faithfully apply those requirements in its CWA decision-making. Because this matter concerns a delegated state making decisions regarding the revision of water quality standards, EPA should exercise its discretion under Section 303(c) (2)-(3) to reassert the primacy of the CWA insofar as it preempts requirements of SB358 of the 2021 Legislative Session, and instruct DEQ that it must reconsider the Big Hole Petition and issue a decision that applies numeric nutrient criteria. To the extent that DEQ fails to comply with requirements of the CWA, EPA has an independent duty to apply presented data and itself make an impairment determination.

MDEQ Has Indicated It Is Not Applying Numeric Nutrient Criteria, Generally, as Part of Surface Water Assessments and Forthcoming FY25 Combined Integrated Report

On April 15, 2025 Upper Missouri Waterkeeper spoke via telephone with DEQ Bureau Chief Andy Ulven regarding the DEQ decision to deny the Big Hole River impairment petition and refusal to apply numeric nutrient criteria. During this conversation Mr. Ulven represented that MDEQ has not applied numeric nutrient criteria in any water quality assessment since the passage of SB 358 of the 2021 Legislative Session, and further represented that the anticipated FY25 combined Integrated Report from MDEQ to EPA would not include assessments or decisions reflecting application of numeric nutrient criteria.

These statements at a minimum require EPA to formally inquire from MDEQ how it is implementing numeric nutrient criteria in its CWA programs, including demonstration(s) verifying the State is faithfully implementing said criteria pursuant to its assessments and Integrated Reports. To the extent DEQ submits a combined FY25 Integrated Report that fails to demonstrate application of numeric nutrient criteria to decisions, EPA must disapprove such proposed action under its unambiguous role as the backstop authority for CWA implementation in Montana.

MDEQ Is Administratively Continuing a Growing Majority of NPDES Permits Ripe for Renewal and In So Doing Circumventing Implementation of Numeric Nutrient Criteria in Effluent Limitations

Upper Missouri Waterkeeper has attached to this letter a spreadsheet containing administratively continued MPDES permits effective as of December 2025. These were gleaned from a state Right to Know Request from Upper Missouri Waterkeeper.

As the list details, there is a pattern of extensive permit delay. In its May 10, 2022 Action Letters to DEQ reaffirming the applicability of numeric nutrient criteria, EPA evaluated MDEQ's administration of its MPDES permit program. Among other items EPA determined that "MDEQ did not take a consistent approach in developing these permits and rarely used its available collection of nutrient research and data to inform its permitting decisions." In the rare instances where MDEQ did apply numeric nutrient criteria in a permitting decision, "it consistently chose to establish effluent limits based on the facility's current performance rather than establish

effluent limits that are protective of the designated uses using one or more of the options outlined in 40 CFRR 122.44(d)(1)(vi)."

Three years since EPA's 2022 review, the plain refusal to apply numeric nutrient criteria in assessment decisions, in conjunction with the dozens of administratively continued permits with nutrient effluent limits, reflects a renewed urgency for another EPA review of DEQ's administration of its MPDES permit program and implementation of numeric nutrient criteria. Reducing and eliminating pollution is a goal of the CWA. DEQ needs to be reminded of its limited discretion to simply refuse to issue permitting decisions, and so too that when it does act on NPDES permits the agency is not simply clearing a path to continued and additional pollution that otherwise would be prevented.

Anticipating a criticism that DEQ's NPDES permitting is not a 'revision of a water quality standard' subject to Section 303(c) EPA review, we disagree. For example, EPA requires compliance schedule provisions to be included in state water quality standards. The provisions pertaining to how criteria are met in reservoirs are water quality standards. Minimum design criteria are, at least in some instances, related to antidegradation policy, including is purpose and growth policy, its nondegradation provisions, and exceptions thereto. The evidence before the agency presents a compelling narrative of a delegated state program off-the-rails, and failing to comply with basic requirements of the CWA.

House Bill 664

This bill seeks to eliminate numeric nutrient criteria, which are water quality standards that serve as the goal posts of waterway health as related to contributions of nitrogen and phosphorus, two of the most common pollution causing chemicals in the Nation. More than 30% of Montana waterways are already impaired at law and failing to attain their designated uses, and nutrient pollution remains at the top of the list as the scientific cause. Keeping the scientific means for identifying – and stopping – harm to water quality is good for public health, good for our outdoors heritage and wildlife, and good for the state's multi-million dollar outdoors economy and countless small business owners.

A primary problem is that the bill lacks any scientific support for eliminating protective water quality standards for nutrients. In 2014, Montana adopted WQS for nutrients – total nitrogen (TN) and total phosphorus (TP) for wadeable streams and certain segments of the Yellowstone River – and submitted the package to EPA for action under CWA section 303. EPA approved those revisions in 2015. The 9th Circuit Court of Appeals has also implicitly affirmed the validity of Montana's numeric nutrient criteria in acting specifically on the validity of Montana's now eliminated, general nutrient variance for municipalities. *See Upper Missouri Waterkeeper v. U.S. Environmental Protection Agency*, 15 F.4th 966 (9th Cir. 2021). Further, EPA reaffirmed the validity and enforceability of Numeric Nutrient Criteria for all CWA purposes by letters, Ref: 8WD-CWB, dated May 10, 2022.

Now, HB644 attempts to do that which has been determined verboten: the bill seeks to eliminate numeric nutrient criteria, with an immediate effective date, and does not propose any replacement equal to or more protective than currently effective numeric nutrient criteria. As a

proposed revision of water quality standards EPA is obligated to review and, based on the anticipated record, must disapprove HB664 and reiterate the continued applicability of numeric nutrient criteria for all CWA purposes in Montana.

House Bill 685

This bill would first effect a denotation change, swapping the phrase 'Nondegradation Analysis' for Feasibility Allowance. As applied to Montana Code Annotated 75-5-303, the language would remove an existing evidentiary burden that DEQ not allow degradation (which is a defined term of law) absent performing a Nondegradation Analysis. The criteria for such analysis is already statutorily defined and includes implementing rules that EPA has determined compliant with the CWA's requirements. The Bill seeks to revise antidegradation policy in Montana by allowing DEQ rulemaking authority to determine new "feasibility" parameters that would allow lower water quality, watering down the statutory mandate of 75-5-303 and vesting DEQ with unfettered discretion to add more criteria sanctioning more pollution to high-quality water.

By amending the statute to allow a reversal of the presumption against degradation, and transformation of Nondegradation Policy into a checklist of "feasibility" based on speculative, TBD terms, constitutes a "revision of a federal water quality standard" subject to EPA review and approval under Section 303(c) of the CWA.

EPA must review the proposed bill revision against baseline requirements of federal Antidegradation Policy, which requires among other items that a policy be capable of preventing the loss of assimilative capacity in surface waters and protection of high-quality water and existing uses. As proposed HB 685 would open pandora's box to a potentially unlimited and unscientific bevy of criteria based on "feasibility," all of which are contrary to the statutory commands and intent of the federal CWA. As such, this bill implicates federal law consistency issues and EPA must review, request clarification from DEQ on its implementation and effect, and take action on such revision within mandatory timeframes post-approval from Governor Gianforte.

House Bill 736

This bill seeks to provide a new regulatory mechanism amending effluent limits in wastewater discharge permits through a novel "offsets" criteria. Its requirements go beyond the scope of the existing Nutrient Credit Trading Policy codified in Circular DEQ-13. In short, the bill would allow a reduction of existing nutrient pollution at one place in a watershed, with a "credit" given to a new or existing discharge permit in another place in a watershed, without compliance with regulatory sideboards required for nutrient credit trading under EPA's established rules and policies.

This "offsets" bill directly affects requirements of the federal Clean Water Act's National Pollutant Discharge Elimination System (NPDES) permit program, including conflicting with the NPDES permit program such as the requirement that a discharge permit not cause or contribute to violations of water quality standards, and that a permit's limits be consistent with reductions contemplated by applicable Total Maximum Daily Loads (TMDLs). So too the bill

directly conflicts with Montana's Antidegradation Policy, including Tier II & Tier III protections and any meaningful protection of assimilative capacity.

We note in particular the proposed statutory metrics of the offsets program are largely predefined, arbitrary, and lacking a scientific basis demonstrating the offsets will assure protection of existing uses of water, protection of designated uses, or protection of downstream uses. As EPA is also no doubt aware, only narrowly tailored nutrient credit trading programs with significant assurances and scientific support have been duly adopted and withstood legal challenges as valid CWA mechanisms.

That said, and to the extent that HB 736 would - as its plain language suggests - expand nutrient credit trading to include ambiguous offsets policy without reasonable assurances of compliance with CWA requirements, the bill directs outcomes contrary to requirements of delegated state NPDES permit programs. As such, EPA can and must exercise its discretion to review HB 736 as both a revision of water quality standards and actions affecting NPDES permit program administration. Indeed, it would be wildly inappropriate - and wasteful of resources - for EPA to wait on any future rulemaking before reviewing and determining the proposed statute's plain language conflicts with mandatory CWA requirements. EPA must instruct DEQ to provide details on the legislation, including implementation and reasonable assurances of how it will comply with baseline CWA and NPDES permitting requirements, and take all actions necessary to assure faithful NPDES permit program and water quality standards implementation.

Conclusion

While the original scope of the April 30, 2025 meeting was to discuss DEQ's unlawful refusal to apply EPA-approved numeric nutrient criteria, as discussed above DEQ's implementation of its CWA programs and imminent new state legislation demonstrates serious flaws, patterns and practices that are contrary to CWA requirements. Therefore the undersigned is formally bringing all these matters to EPA's attention.

The CWA does not allow delegated States, whether for the best intentions or under the most egregious political pressure, to pick and choose if and when they will comply with CWA requirements, from waterway assessments, to revisions of standards, to NPDES permit program implementation. EPA can and must exercise its authority to address each of the matters above and assure compliance with unambiguous requirements of the CWA.

Respectfully -

/s/ Guy Alsentzer
Executive Director
Guy@UpperMissouriWaterkeeper.org
T: 406.570.2202

24 S. Willson Ave., Ste. 6-7, Bozeman MT 59715
www.UpperMissouriWaterkeeper.org

Permit Number	Permittee/Facility		Receiving Waters	Date of Expiration	In Basin						
MT0000019	BNSF Railway Co Whitefish Rail Yard WTF	Whitefish	Whitefish River	9/30/23							
MT0000256	Phillips 66 Billings Refinery	Billings	Yegen Drain and Yellowstone River	7/31/21							
MT0000451	Ash Grove Cement Co Montana City Plant	Clancy	Prickly Pear Creek	1/31/24	1						
MT0000477	Par Montana Billings Refinery	Billings	Yellowstone River	7/31/20							
MT0000485	GGC Three Forks WWF	Three Forks	Missouri River	7/31/24	1						
MT0000892	Decker West Mine	Decker	Tongue River Reservoir and Pearson Creek	4/30/17							
MT0020001	City of Miles City WWTP	Miles City	Yellowstone River	9/30/23							
MT0020036	City of Columbia Falls WWTP	Columbia Fa	Flathead River	7/31/22							
MT0020044	City of Lewistown WWTP	Lewistown	Big Spring Creek	8/31/17							
MT0020079	City of Conrad WWTP	Conrad	Unnamed tributary to Dry Fork of the Marias	11/30/23							
MT0020141	City of Cut Bank WWTP	Cut Bank	Old Maids Coulee	2/28/17							
MT0020184	City of Whitefish WWTP	Whitefish	Whitefish River	7/31/20							
MT0020303	Town of Bridger WWTP	Bridger	Clarks Fork Yellowstone River	4/30/24							
MT0020311	City of Laurel WWTP	Laurel	Side channel of Yellowstone River	3/31/21							
MT0020397	Bigfork WWTP	Bigfork	Flathead Lake	4/30/23							
MT0020435	City of Livingston Water Reclamation Facility	Livingston	Yellowstone River	10/31/21							
MT0020494	City of Libby WWTP	Libby	Kootenai River	6/30/21							
MT0021229	Absaloka Mine	Hardin	Tributaries to Sarpy Creek, Middle Fork Sarpy Creek, East Fork Sar	9/30/20							
MT0021431	Galen Campus Wastewater Treatment Plant	Galen	Unnamed irrigation ditch, tributary to Clark Fork River	7/31/17							
MT0021440	Vaughn Cascade County Sewer District	Vaughn	Sun River	11/30/17	1						
MT0021458	City of Dillon WWTP	Dillon	Beaverhead River	6/30/22	1						
MT0021571	Town of Belt WWTF	Belt	B & M Coulee	6/30/22	1						
MT0021636	Town of Hobson WWTF	Hobson	Unnamed drainage ditch	8/31/24							
MT0021750	Absarokee Sewer District RSID 5&7	Absarokee	Ditch which drains to Rosebud Creek/direct to Rosebud Creek	1/31/22							
MT0021849	City of Sidney Wastewater Treatment Facility	Sidney	Yellowstone River via groundwater	2/28/19							
MT0021857	Town of Manhattan	Manhattan	Dita Ditch	8/31/15	1						
MT0021920	City of Great Falls WTF	Great Falls	Missouri River	8/31/24	1						
MT0021938	City of Kalispell WTF	Kalispell	Ashley Creek	7/31/20							
MT0022012	Butte-Silver Bow City/Counter WTF	Butte	Silver Bow Creek	3/31/17							
MT0022080	Highwood County Water & Sewer District WWTP	Highwood	Highwood Creek	9/30/23	?						
MT0022586	City of Billings	Billings	Yellowstone River	3/31/20							
MT0022594	City of Missoula WWTP	Missoula	Clark Fork River	4/30/20							
MT0022608	City of Bozeman WWTP	Bozeman	East Gallatin River	5/31/17	1						
MT0022616	City of Deer Lodge WWTP	Deer Lodge	Clark Fork River	2/28/18							
MT0022641	City of Helena WWTP	Helena	Prickly Pear Creek	9/30/17	1						
MT0022713	Town of Stevensville WWTP	Stevensville	Side channel of Bitterroot River	5/31/24							
MT0023566	Elkhorn Health and Rehabilitation Center WTP	Clancy	Prickly Pear Creek	3/31/22	1						
MT0023639	Peace Valley Hot Springs WTF	Boulder	Little Boulder River	11/30/20	1						
MT0024210	Decker Coal Co East Mine	Decker	Tongue River Reservoir	4/30/17							
MT0024619	Navajo Transitional Energy Co Spring Creek Mine	Decker	Tributaries to Spring Creek, S Fork Spring Creek, Pearson Creek, M	1/31/24							
MT0025020	Paleo Search Inc Suction Dredge Project	Hauser Lak	Hauser Lake	4/30/23	1						
MT0025038	Willow Creek Sewer District WTF	Willow Cree	Unnamed borrow ditch along Hwy 287	11/30/23	1						
MT0027821	Magric Talc Beaverhead Mine	Madison Co	Unnamed tributary to Middle Fork Stone Creek	1/31/20	1						
MT0028584	Magris Talc Yellowstone Mine	Cameron	Johnny Gulch and Ruby Creek Irrigation Ditch	7/31/19	1						
MT0028983	Signal Peak Energy Bull Mountain Mine	Roundup	Rehder Creek and PM Draw	4/30/18							
MT0029840	Prestige Hotels Econolodge	Missoula	Grant Creek	5/31/24							
MT0029891	Barretts Minerals Inc Treasure Mine	Dillon	Left Fork Stone Creek	5/31/19	1						
MT0030180	Yellowstone Energy Limited Partner Facility	Billings	ExxonMobil Storm Water Ditch	4/30/19							
MT0030244	Town of Kevin WTF	Kevin	Unnamed dry lake	4/30/23							
MT0030651	Second Step Asset Management Company	Shelter Islar	Non-contact cooling water from a heat exchange system, Flathead	8/31/23							
MT0030732	Town of Ennis WTF	Ennis	Madison River	4/30/19	1						
MT0031437	Sweet Grass Community County Water Sewer Dis	Sweet Gras	Unnamed ephemeral lake	1/31/23							
MT0031631	City of Bozeman Lyman Creek Reservoir	Bozeman	Unnamed drainage	9/30/22	1						
MT0031712	Wolf Creek County Water Sewer District WTF	Wolf Creek	Little Prickly Pear Creek	10/31/16	1						
MT0031755	Butte Highlands Mine	Butte	Basin Creek, Moose Creek, Fish Creek	7/31/18							
MT0031879	TA Operating Laurel Travel Center WTF	Laurel	Nutting Drain	6/30/21							
MTG130000	GP for Concentrated Aquatic Animal Production			6/30/21							
MTG581000	GP for Domestic Sewage Treatment Lagoons			12/31/22							
					19						

DEQ
Montana Department
of Environmental Quality

April 14, 2025

Sent via email to:

Guy Alsentzer
Upper Missouri Waterkeeper
guy@uppermissouriwaterkeeper.org

Brian Wheeler
Big Hole River Foundation
brian@bhrf.org

RE: Petition Under MCA § 75-5-702 and 33 U.S.C § 1313(d)(1) to Assess the Big Hole River's Upper, Middle, and Lower Segments and Determine That Chronic Exceedances of Numeric Nutrient Criteria Require Listing as an Impaired Water on Montana's 303(d) List

Dear Petitioners:

DEQ received your petition to assess beneficial uses, list as nutrient impaired, and prioritize development of Total Maximum Daily Loads for three segments of the mainstem Big Hole River on February 13, 2025.

As a result of Senate Bill 358, passed during the 2021 Legislative Session, 2021 Mont. Laws ch. 342, DEQ is unable to base nutrient assessments upon the numeric nutrient criteria found in Circular DEQ-12A. Nonetheless, DEQ reviewed the data in your petition, along with other readily available data, in consideration of the state's established narrative criteria at ARM 17.30.637(1)(e).

DEQ has determined that in order to proceed with a narrative assessment of undesirable algae growth for the three segments of the Big Hole River named in the petition, additional information is needed, as follows:

1. Any photos, videos, or drone coverage of algae blooms with associated site metadata, including latitude/longitude or other detailed site descriptions, captured within the upper, middle, and lower Big Hole River segments.

2. Macroinvertebrate data (excluding DEQ-collected samples) with associated site metadata as stated in #1 and laboratory quality assurance documentation.

3. Any known ash-free dry weight, chlorophyll a, continuous dissolved oxygen, or % cover (aquatic plant/algae field form) algae measurements (excluding DEQ-collected samples) with appropriate site metadata as stated in #1.

DEQ is aware there may be further data available in these categories that your organization, or another organization, collected. The readily available data DEQ has reviewed, including the information in your petition, is not sufficient for the named segments relating to these data types to assess under ARM 17.30.637(1)(e).

Based on the above, DEQ cannot grant your request. However, DEQ is committed to reviewing any additional data that may further support a narrative assessment of the Big Hole River, should you wish to provide it.

If you are interested in proceeding with a narrative assessment, please provide the above listed information at your earliest convenience and contact Darrin Kron at dkron@mt.gov or (406) 444-4765 with specific questions.

Sincerely,

Sonja Nowakowski

Sonja Nowakowski, Director

CC: Tina Laidlaw, Nutrient Coordinator, Region 8 EPA, Laidlaw.Tina@epa.gov
Stephanie DeJong, Clean Water Branch Manager, Region 8 EPA, DeJong.Stephanie@epa.gov