April 22, 2015

Governor Steve Bullock
State Capitol
P.O. Box 200801
Helena, MT 59620-0801

Dear Governor Bullock:

The undersigned organizations are writing to express their opposition to Senate Bill 112, Senate Bill 160, and Senate Bill 325. These bills, sponsored by Senators Duane Ankeny and Jim Keane, would weaken Montana’s water quality laws and place additional pressure on the Montana Department of Environmental Quality to prematurely provide approval for additional pollution discharges into at-risk waterways. In the interest of protecting Montana’s clean water for present and future generations, we respectfully request that you veto all three of these bills.

Senate Bill 325 removes protections for downstream water users, such as irrigators. This bill would overturn a Board of Environmental Review rule that was adopted after years of scientific analysis and consensus building. That decision survived a court challenge and was vigorously, and successfully, defended by the State. SB 325 ignores that history and the effort spent by irrigators to protect their water quality and their livelihoods. This bill simply puts downstream water users at risk for pollution from upstream sources. As initially passed by the Senate, SB 325 contained specific protections for downstream water users from new upstream water discharges that could threaten the quality of their water supply. Unfortunately, the House removed these protections.

SB 325 also contains contradictory provisions that are unclear at best. The first and second sentences of the bill say that DEQ cannot “apply a standard” to a water body that is more stringent than the natural background water quality, and if the standard is more stringent than the natural condition, then the natural condition becomes the standard. This language contradicts the third sentence of that same paragraph which says the DEQ “shall implement the standard” to protect downstream water quality standards. The natural condition of the stream can vary over the course of seasons and years. During periods when the water quality is good, downstream water users will use that water. Conversely, when flows are low and natural concentrations of harmful constituents are higher, downstream water users cannot use that water. Both conditions may be natural.

The House amendments stripped specific protections for downstream water users. It is also worth noting that these amendments were only supported by Arch Coal, the Montana Petroleum Association, the Montana Mining Association, and DEQ. We ask that you stand with the conservation community and agriculture by reinserting this language or the bill should be vetoed. There should be no confusion about DEQ’s duty to protect existing water users.

Senate Bill 112 places an arbitrarily short deadline of 180 days on the DEQ to complete a total maximum daily load analysis (TMDL). The TMDL process is complicated, requires data gathering and analysis, and involves significant input from affected local communities and water
users. The purpose of the TMDL process is to design a plan to clean up impaired waterways. If that process is short-circuited, the TMDL may not be legally defensible and may not improve and protect water quality in accordance with the state and federal clean water acts. As written, SB 112 requires the TMDL to be developed in 180 days even when DEQ says that timeframe is not practicable. A party may appeal DEQ’s proposed timeframe to the Board of Environmental Review (BER). If the BER is unable to complete the contested case process in 180 days, DEQ is required to issue the TMDL within 180 days. This provision gives a party an incentive to drag the BER process out beyond the 180 days and insist DEQ complete the TMDL in that timeframe regardless of what BER decides is a reasonable timeframe. Section 9(d) of SB 112 should be amended to clarify that if a party appeals DEQ’s TMDL timeframe to the BER, the BER has the authority to establish the timeframe; the timeframe does not default to 180 days. If the bill is not amended, it should be vetoed.

**Senate Bill 160** defines the “natural” condition of streams and rivers to include human caused pollution. Including human pollution, such as mining runoff, in the definition of what is considered natural defies common sense and violates the federal Clean Water Act. Maintaining this provision in Montana law puts DEQ in the position of either violating federal law or ignoring state law. Section 2(b) of SB 160 should be eliminated in order to provide the proper safeguards to protect our rivers against pollution.

We appreciate your administration’s support of clean water, valued highly by Montanans throughout the state. In the spirit of that support, we urge you to veto or issue an amendatory veto of SB 325, SB 112, and SB 160.

Thank you for your consideration of our request and your continued support of clean water.

Sincerely,

Anne Hedges  
Montana Environmental Information Center

Karen Knudsen  
Clark Fork Coalition

Amy Seaman  
Montana Audubon

Neal Ullman  
Montana Conservation Voters

Dave Chadwick  
Montana Wildlife Federation

Steve Charter  
Northern Plains Resource Council