OFFICE OF THE GOVERNOR
STATE OF MONTANA

EXHIBIT 6
DATE 3/16/09
SB 557

BRIAN SCHWEITZER
GOVERNOR

JOHN BOHLINGER
LT. GOVERNOR

June 18, 2007

The Honorable Max Baucus
Room 511 Hart Senate Office Bldg.
Washington, D.C. 20510

Dear Senator Baucus:

I am writing to urge you to co-sponsor legislation amending the Federal Water Pollution Control Act to reaffirm and clarify the jurisdiction of the United States over "waters of the United States" that have been protected by the law for the past three decades. Representative Oberstar introduced H.R. 2421 with 157 original co-sponsors in the House earlier this month. Senator Feingold is seeking co-sponsors for a companion Senate bill.

This simple legislation, The Clean Water Restoration Act, reaffirms the original intent of Congress when it enacted the Federal Water Pollution Control Act Amendments of 1972 (Clean Water Act) to restore and maintain the chemical, physical, and biological integrity of the waters of the United States.

Two recent U.S. Supreme Court decisions (SWANCC, 2001 and Rapanos, 2006) have undermined the ability of the federal and state governments to protect the many streams, ponds, and wetlands under the Clean Water Act, putting more and more of the nation's and Montana's valuable resources at risk of pollution and destruction. These decisions directly affect the safety of our drinking water, habitats for endangered wildlife, and fragile ecosystems. The Clean Water Restoration Act would end the legal wrangling about what Congress meant when it passed that landmark law in 1972. The bill re-establishes protection for all waters historically covered by the Clean Water Act and makes clear that Congress's primary concern in 1972 was to protect the nation's waters from pollution, rather than just sustain the navigability of waterways.

Montana has supported strong national leadership in the Clean Water Act in response to these two Supreme Court cases. In 2003, our Montana DEQ submitted comments to the Bush Administration on the Advanced Notice of Proposed Rulemaking Relating to the Definition of "Waters of the United States" (attached). Fortunately, at the urging of Montana and more than 40 other states, the federal agencies withdrew their proposal to reduce the scope of waters safeguarded by federal law in that proposed rulemaking. More recently, the Montana Attorney General joined 32 other Attorneys General in submitting an Amicus Brief in the Rapanos case on the side of the federal government in support of strong Clean Water Act protections for all historically covered waters (attached).

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The importance of Montana's water resources—including intermittent and ephemeral streams that account for approximately 70% of Montana stream miles and wetlands—cannot be overstated. These waters are critical components of the hydrologic cycle supporting flood control, groundwater recharge, filtering out nutrients and pollutants, and providing essential habitat for 60% of species identified as having greatest conservation need in Montana.

It's imperative that we reaffirm the original intent of Congress to protect these aquatic resources when it enacted the Clean Water Act and again I encourage you to support this legislation.

Sincerely,

BRIAN SCHWEITZER
Governor