SENATE NATURAL RESOURCES
EXHIBIT NO. 14
DATE Feb 18 2009
BILL NO. SB 422

Senate Bill 422
February 18, 2009
Presented by Bob Lane
Senate Natural Resources Committee

Mr. Chairman, members of the Committee, I am Bob Lane, Chief Legal Counsel of the Montana Department of Fish, Wildlife & Parks (FWP). FWP opposes SB 422.

The problem is the very dangerous new language on page 1, lines 16-20. The effect of this language is that objectors to applications for a new water permit or applications for a change in a water right must show that there is a decrease in stream flow that is physically measurable. Generally, stream flows are only measurable to plus or minus 5% to 10% and this is only with the best equipment and setups. A decrease in stream flow of between 5% to 10% is significant but it can't be measured and, therefore, a new application taking this much water could not be objected to and would be automatically approved under SB 422.

SB 422 ignores the cumulative impact of new appropriations, even appropriations that may consume as much as 10% of the flow of the source stream. The property rights of senior water right holders could not be protected. It does not take very many appropriations of 5% to 10% of the flow of a source stream to make dramatic impacts on senior water right holders.

Also SB 422 changes the burden of proof in applications for new water use. Under present law, the burden is on the applicants to show there is enough water. SB 422 would put the burden on the objectors to show they would be harmed. Applicants only have to apply once but senior water right holders have to object to every new application to avoid the adverse impacts of the cumulative effects of small new diversions and use of water.

To summarize, HB 422 is a threat to existing water users because it ignores the very real problem of the cumulative impacts of even small new water users and because it unfairly places too much burden on objectors to protect their vested property rights.

BL February 17, 2009