Montana

(DRAFT)

State Agency

Montana's water quality laws are administered by the Montana Department of Environmental Quality (DEQ), Water Protection Bureau.[1]

Delegated Permit Authority

Montana has been delegated permit authority for the NPDES permit program including stormwater permits for all areas except Indian lands. Montana has also been delegated authority from the COE for the section 404 dredge and fill permit program.

State Definition of Covered Waters

In Montana, "'state waters' means a body of water, irrigation system, or drainage system, either surface or underground. The term does not apply to: 1) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or 2) 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**."**[2]

According to the DEQ, water quality standards extend to *all* State surface waters (rivers, streams, lakes, reservoirs, wetlands, etc.). This is because the state's classification system is based on large geographic basins, not on individual water bodies. However, State water quality standards do make a distinction between ephemeral and intermittent water bodies. Intermittent and perennial water bodies are protected by both narrative and numeric criteria, whereas ephemeral water bodies are only protected by our narrative standards. Definitions of ephemeral and intermittent water bodies (as well as classifications, and narrative standards) can be found in the Administrative Rules of Montana (ARM) 17.30.601 through 17.30.670.[3]

Groundwater is also protected with State water quality standards and classifications, although these rules are more general (fewer classes and fewer beneficial uses). These are found at ARM 17.30.621 through 629.

Point Sources and NPDES Permits

The BLM does not hold any NPDES permits in Montana.

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[1] Information on the Department of Environmental Quality (DEQ), Water Protection Bureau is available at: http://www.deq.state.mt.us/wqinfo/Index.asp.

[2] MCA § 75-5-103(29).

[3] Available at: http://www.deq.state.mt.us/wqinfo/Standards/Index.asp.

Water Quality Standards

Designated Uses

Montana's designated uses are outlined in Figure One.

Figure One: Montana State-Designated Use Descriptions

State-Designated Use Code	State-Designated Use	State-Designated Use Description
AG	Agricultural	Agricultural water supply.
AQL	Aquatic Life	Growth and propagation of aquatic life, waterfowl and furbearers.
CWF	Cold Water Fishery	Growth and propagation of cold water fish.
WWF	Warm Water Fishery	Growth and propagation of warm water fish.
IND	Industrial	Industrial water supply.
DW	Drinking Water	Drinking, culinary and food processing use (after treatment).
PCR	Primary Contact Recreation	Bathing, swimming and recreation.

Source: *EPA WQSDB available at: http://oaspub.epa.gov/wqsdatabase/wqsi_water body.rep_parameter*

Montana further classifies its designated uses into classification standards. Generally, designated uses for each classification are as follows:

A1 Classification Standards[4]
Suitable for drinking, culinary, and food processing purposes after conventional treatment for removal of naturally present impurities. Water quality must be suitable for bathing, swimming and recreation; growth and propagation of salmonid fishes and associated aquatic life; waterfowl and furbearers; and agricultural and industrial water supply.

B-1 Classification Standards[5]
Suitable for drinking, culinary and food processing purposes, after conventional treatment; bathing, swimming and recreation; growth and propagation of salmonid fishes and associated aquatic life, waterfowl and furbearers; and agricultural and industrial water supply.

B-2 Classification Standards[6]
Suitable for drinking, culinary and food processing purposes, after conventional treatment; bathing, swimming and recreation; growth and marginal propagation of salmonid fishes and associated aquatic life, waterfowl and furbearers; and agricultural and industrial water supply.

B-3 Classification Standards[7]
Suitable for drinking, culinary and food processing purposes, after conventional treatment; bathing, swimming and recreation; growth and propagation of non-salmonid fishes and associated aquatic life, waterfowl and furbearers; and agricultural and industrial water supply.

[4] ARM 17.30.622.
[5] ARM 17.30.623.
[6] ARM 17.30.624.
[7] ARM 17.30.625.

C-1 Classification Standards[8]
Suitable for bathing, swimming and recreation; growth and propagation of salmonid fishes and associated aquatic life, waterfowl and furbearers; and agricultural and industrial water supply.

C-2 Classification Standards[9]
Suitable for bathing, swimming and recreation; growth and marginal propagation of salmonid fishes and associated aquatic life, waterfowl and furbearers, and agricultural; and industrial water supply.

C-3 Classification Standards[10]
Suitable for bathing, swimming and recreation, growth and propagation of non-salmonid fishes and associated aquatic life, waterfowl and furbearers. The quality of these waters is naturally marginal for drinking, culinary and food processing purposes, and agricultural and industrial water supply.

Water Quality Criteria

Montana's water quality standards include both use-specific components,[11] and general provisions.[12] The use-specific standards vary depending on the water-use classification, whereas general provisions apply to all State waters. Both narrative and numeric criteria are included in Montana's water quality standards.

Montana has established numerical water quality criteria relating to: chronic and acute factors affecting aquatic life;[13] human health;[14] fecal coliform levels;[15] changes in pH, turbidity, color, and temperature.[16] Some water quality standards can be specified in absolute, numerical terms, such as "acute aquatic life standards," or "chronic aquatic life standards" which limit the average concentration of a toxic over a period of time. Many others, however, are defined in terms of change from what would naturally exist, such as "no increase above naturally occurring condition" or "induced variation of hydrogen ion concentration (pH) within the range of 6.5 to 8.5 must be less than 0.5 pH units."

Narrative criteria provide a minimum level of protection to State waters. Montana's narrative water quality standards encompass two basic concepts: 1) activities which would result in nuisance to aquatic life are prohibited;[17] and 2) no increases are allowed above naturally occurring conditions of sediment, settleable solids, oils, or floating solids, which are harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife.[18] The DEQ interprets nuisance aquatic life as excessive biomass

[8] ARM 17.30.626.
[9] ARM 17.30.627.
[10] ARM 17.30.629.
[11] ARM 17.30.621-629.
[12] ARM 17.30.635-646.
[13] Circular WQB-7.
[14] Circular WQB-7.
[15] ARM 17.30.620-629.
[16] ARM 17.30.620-637.
[17] ARM 17.30.637.
[18] ARM 17.30.620-629.

(e.g., alga growth) or the dominance of an undesirable species. "Naturally occurring" refers to conditions or materials present from events over which man has no control, or from developed land where "reasonable" land, soil, and water conservation practices have been applied. Conditions resulting from reasonable operation of dams in existence July 1, 1971, are considered natural.[19]

The DEQ uses reference condition to determine if narrative water quality standards are being achieved. The term "reference condition" is defined as the condition of a water body capable of supporting its present and future beneficial uses when all reasonable land, soil, and water conservation practices have been applied. The DEQ applies the reference condition approach for making beneficial use-support determinations for certain pollutants (such as sediment) that have specific narrative standards.

Montana does not have streamflow criteria to protect streamflow necessary to support existing uses. The State does have biological criteria through narrative criteria such as "suitable for salmonids and associated aquatic life." The State is in the process of developing more specific criteria that may include numerically quantified criteria.

Sediment

Montana's system for sediment is flexible enough to use whatever sediment data appears to be appropriate for the situation.

Antidegredation

Montana's antidegradation policy, which can be found in ARM 17.30.705, closely mirrors the CWA's antidegradation policy. This policy requires that waters of higher quality than applicable standards be maintained in their higher quality.

In Montana, ONRWs are identified as Outstanding Resource Waters (ORW). Montana defines ORWs as "all state waters that are located in national parks, national wilderness or primitive areas. ORW also means state waters that have been identified as possessing outstanding ecological or domestic water supply significance and subsequently have been classified as an ORW by the Board of Environmental Review (the board)."[20] To get a water body designated as an ORW, the public must submit a petition to the board. The board may only classify a water body as an ORW if it accepts a petition and finds that the water body identified in the petition constitutes an ORW based on specific criteria,[21] the classification is necessary to protect the ORW, and there is no other effective process available that will achieve the necessary protection.[22] The board then recommends its findings to the Montana State Legislature which ultimately decides whether or not to designate the water body as an ORW. There are no provisions in the Montana law for the board or the legislature to make an independent

[19] MCA 75-5-306.
[20] ARM 17.30.702(18).
[21] "The board shall consider: a) whether the waters have been designated as wild and scenic; b) the presence of endangered or threatened species in the water; c) the presence of an outstanding recreational fishery in the water; 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 value not specifically mentioned." Sec. 75-5-316(4).
[22] Mont. Code Ann. Sec 75-5-316(3)(c).

designation of an ORW without a citizen petition. The Montana ORW program began in 1995 and in 2002, the board had received its first ORW petition.[23]

Montana does not make use of the Tier II _ concept. The State does not have formally designated Tier I and Tier II waters.

ONRWs on BLM Land

There are no ORWs on BLM lands in Montana.

State 305(b) Reporting

The National Assessment Database (NAD) contains information on the attainment of water quality standards. Assessed waters are classified as either Fully Supporting, Threatened, or Not Supporting their designated uses. This information is reported in the National Water Quality Inventory Report to Congress under Section 305(b) of the CWA.[24]

State 303(d) List and TMDLs

The EPA TMDL Tracking System contains information on all impaired waters under section 303(d) of the CWA. The database also has information on EPA-approved TMDLs.[25] As of 2002, the date of the most recent data in the EPA's tracking system, Montana reported 527 water bodies on its 303(d) List and had 310 TMDLs approved. Montana's 2004 303(d) List can be found in its Integrated Report.[26]

Montana has GIS coverage of their impaired water bodies. The 2002 303(d) GIS data is available on-line.[27] 2004 GIS coverages are not currently available on-line. However, the information can be found on-line in reports and maps.[28] The BLM maintains spreadsheet information on impaired streams on BLM lands in Montana. This data is available from the BLM Montana State Office.

303(d) List

Listing and Credible Data Standards

Montana water quality law requires that the listing of waters as impaired or threatened must be supported by "sufficient credible data" (SCD).[29] The DEQ uses a two-step process to assess waters. First, the agency searches out available data and evaluates whether there are SCD to make a valid and reliable determination of beneficial use support. Second, if the data are adequate, the DEQ compares the data with the applicable water quality standards to make a beneficial use-support determination (BUD).

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[23] On 6/29/2001 American Wildliands petitioned for ORW designation for the Gallatin River and on 4/1/2002 they received a 4-2 vote by the Board of Environmental Review to accept their petition to list the 45 mile section of the Gallatin River as an Outstanding Resource Water.

[24] Montana's attainment of water quality standards can be found at: http://oaspub.epa.gov/waters/w305b_report.state?p_state=MT.

[25] Montana's 303(d) Lists and approved TMDLs are available at: http://oaspub.epa.gov/waters/state_rept.control?p_state=MT.

[26] Available at: http://nris.state.mt.us/wis/environet/2004Home.html.

[27] This data can be downloaded at: http://nris.state.mt.us/wis/environet/DataBaseChoice2.html.

[28] Available at: http://nris.state.mt.us/wis/environet/2004reports/reportable.htm.

[29] A full description of Montana's sufficient credible data requirements can be found at: http://www.deq.state.mt.us/wqinfo/datamgmt/PDF/SufficientCredibleData.pdf.

Montana law defines SCD as "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."[30] Montana has developed sufficient credible data criteria and decision tables to evaluate data adequacy for streams, lakes, and wetlands. These tables can be found in Appendix A of Montana's 2004 Integrated Report.[31]

The SCD review focuses on four components that contribute to data validity and reliability for water quality assessment. These include: technical soundness of methodology; spatial/temporal coverage; data quality; and data currency. In general, SCD will result when several types of data have been collected over a period of time using sound technical methods and there are no indications of recent changes to the water body. Montana's SCD standards are specific to their Water-Use Classification System.[32]

Once it is determined that SCD are available for a water body, the assessment process moves to a beneficial use-support determination (BUD). Montana's BUD process follows EPA's guidance by determining the degree of support based on the four categories: full support, partial support, non-support, or threatened.

When the DEQ first applied the SCD methodology in 2000, it found that sufficient data were not available to make determinations for approximately 500 waters which had previously been listed on their 303(d) List. These waters were placed on a list of waters to be reassessed. Appendix B in Montana's 2004 Integrated Report provides a list of all of the 2000 waters to be reassessed, as well as the progress of reassessment.[33] The complete reassessment of these streams will be completed by Fall 2005.

De-Listing

Montana's de-listing process is essentially the same as the listing process. A sufficient credible data standard test must first be passed, and then the data is reviewed to determine if the

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[30] MCA 75-5-103.

[31] Available at: http://nris.state.mt.us/wis/tmdlapp/pdf2004/Appendix_A.pdf.

[32] Aquatic Life and Fisheries Support SCD – The Montana Water-Use Classification System requires that all waters support the "growth and propagation of fishes and associated aquatic life, waterfowl, and furbearers" (ARM 17.30.604-624). Based on this requirement, the "aquatic life" assessment considers fish, invertebrates, aquatic plants, and associated wildlife. Therefore, the aquatic life sufficient credible data assessment entails an evaluation and scoring of the following data categories: *Habitat/physical* – includes qualitative and/or quantitative riparian and aquatic vegetation information, and hydrogeomorphic characteristics and functions; *Biology* – includes chlorophyll a data; and aquatic biological community data such as fish, macroinvertebrates and algae; and wildlife community characteristics; *Chemistry/toxicity* – includes bioassay, temperature and total suspended sediment data and chemistry data such as toxicants, nutrients, and dissolved oxygen. Ideally, SCD for aquatic life would include data pertaining to all three categories; but very strong evidence relating to two data categories can constitute SCD for an aquatic life and fisheries beneficial use-support determination.
Drinking Water and Contact Recreation SCD – For drinking water and contact recreation uses, evaluation of multiple data categories is not necessary. Data are simply rated as sufficient or insufficient for these uses based on tables that apply the four general components of data adequacy to the specific standards underlying drinking water and contact recreation use support.
Agricultural and Industrial Water Supply SCD – Generally, if there are sufficient credible data for drinking water, contact recreation, and aquatic life beneficial use-support determinations, there are also sufficient data to make agriculture and industry beneficial use-support determinations. However, additional salinity and toxicity information may be required for agriculture supply use support determinations.

[33] Water to be Monitored and Reassessed - Lacking Sufficient Credible Data (from 2000 303(d) List) is available at: http://nris.state.mt.us/wis/tmdlapp/pdf2004/Appendix_B.pdf.

water body supports uses and standards. Appendix A of Montana's 2004 Integrated Report contains further details on the State's de-listing process.[34]

TMDLs

In 2000, the DEQ adopted a new methodology for scheduling waters for TMDL development.[35] The DEQ then identified 91 watersheds in the State as appropriate "planning areas" for TMDL development. Each planning area was then scheduled for plan development. This schedule was compiled in response to a June 2000 US District Court order requiring the EPA and the DEQ to adopt a schedule which would assure the development by May 5, 2007, of all necessary TMDLs for waters on the 1996 303(d) List. This order schedule allows flexibility for the DEQ and the EPA so long as the pace of TMDL development is maintained. There have been several schedule modifications, and in 2003 the Montana State Legislature extended the original 10-year date for completing TMDLs for waters listed in 1996 by an additional 5 years. If the Court grants similar schedule relief, the DEQ and the EPA will have until May 5, 2012, to complete all necessary TMDLs. Montana's 2004 Integrated Report contains the planning areas schedule for TMDL development from 2004 through 2006[36] and a list of TMDLs required within each planning area.[37]

Montana has a Statewide TMDL Advisory Group (STAG). The issues they are currently addressing include: the technical standards for TMDL and Water Quality Restoration Plan determinations; the schedule for completion of TMDLs; additional resources/staffing/more efficient process for TMDL completion; and the slow rate of assessment of waters lacking SCD for determination of water quality impairment.

Establishment, Apportionment, and Implementation

The DEQ uses a watershed approach in its TMDL proccess. The DEQ, in cooperation with the EPA, has aggregated all TMDL waters within their respective watersheds, and each watershed is placed on a schedule for TMDL completion.[38] Montana's approach is to include TMDLs as one component of a comprehensive water quality restoration plan for each of the State's 91 watershed planning areas.

Local watershed groups are responsible for implementing TMDLs. The strategies for TMDL implementation are outlined in the TMDL plan's implenentation section. However, local groups develop and prioritzie their actions for voluntary implementation activies on nonpoint sources. Five years after the approval of the TMDL, the DEQ conducts a formal review of progress toward achieving TMDL implementation.

Water Quality Monitoring

[34] Available at: http://nris.state.mt.us/wis/tmdlapp/pdf2004/Appendix_A.pdf.
[35] This methodology employed a weighted scoring system, based on the 13 prioritization criteria mandated by the Montana Water Quality Act.
[36] 2004 Montana Water Quality Integrated Report Overview, p. 9. Available at: http://nris.state.mt.us/wis/TMDLApp/pdf2004/OverviewText.pdf.
[37] 2004 Montana Water Quality Integrated Report, Appendix G. Available at: http://nris.state.mt.us/wis/tmdlapp/pdf2004/Appendix_G.pdf.
[38] This schedule is available at: http://www.deq.state.mt.us/wqinfo/TMDL/pdf/2000TMDLPlanningSchedule.pdf, and updates to the schedule are available at: http://www.deq.state.mt.us/wqinfo/TMDL/TMDLSched2003real.pdf.

The Montana DEQ currently is coordinating with the US Geological Survey (USGS) to develop a new water quality monitoring plan for Montana. The plan will include the monitoring of fixed stations, reference sites, and stream assessments.

Fixed Stations

The major goal of the fixed station monitoring is to determine statewide water quality status and trends. Thirty-seven fixed station sites are currently being monitored. The fixed station sites are located at active USGS flow gauging stations and include the mainstem of Montana rivers and their major tributaries. At this time, fixed station monitoring includes four water column samplings per year. Water column samples are collected in the spring during the rising, peak and falling limbs of the runoff portion of the annual hydrograph, plus during the late summer to characterize base flow. The water column is analyzed for total suspended sediment, nutrients, metals, common ions, pH, temperature, and conductivity. In the future the DEQ intends to sample for sediment (streambed) trace metals, benthic chlorophyll, and macroinvertebrate and algae communities at the fixed station sites once per year (late summer). The DEQ also anticipates assessing the fish communities every five years (8 sites/year), and conducting an air photo survey of each river segment or major tributary every ten years (4 sites/year). These evaluations will characterize the streams' geomorphology and riparian habitats.

Reference Sites

One objective of monitoring the reference sites will be to improve the beneficial use support decision criteria that the DEQ uses to determine if a stream segment is water-quality limited. Once adequate funding is identified, the DEQ hopes to sample approximately 12-16 reference sites per year. These reference sites will be evenly distributed between four regions: Upper Missouri, Lower Missouri, Yellowstone and Columbia; and new reference sites will be selected every three years. The DEQ anticipates working with local groups and agencies to establish the location of the reference sites that are representative of the major stream types found in Montana. Reference site monitoring will probably include the sampling and analyses of the water column and sediment (streambed) chemistry, periphyton, chlorophyll, community structure, and macroinvertebrates.

Stream Reach Assessments

The objective of the targeted stream reach assessment is to identify stream segments that are not currently on the 303(d) List that are water quality limited and require restoration plans. The DEQ anticipates collecting a combination of chemical and biological data when conducting stream reach assessments. The DEQ also intends to conduct stream reach habitat assessments that would include a combination of qualitative evaluations with photo points, and quantitative measurements of the stream geomorphology and riparian vegetation. These assessments will likely target stream reaches that are perceived by the public to be water quality limited. The Water Quality Monitoring Work Group (WQMWG) of the Montana Watershed Coordination Council (MWCC) will serve as a forum for discussing and setting monitoring priorities. The number of stream reach assessments that will be conducted each year will be dependent on available funding.

Nonpoint Source Pollution Program

Montana's 2004 nonpoint source management plan identifies the following objectives: support local conservation activities; complete comprehensive assessments; improve collaboration with other programs, agencies, and organizations; and improve connection between assessment, planning, and implementation. To achieve these objectives, Montana takes a watershed approach that relies on grassroots groups developing voluntary approaches to restoring water quality.

From 1989 to 1997, Montana's NPS program focused on developing BMPS, identifying partnerships, establishing agreements for interagency cooperation, and funding projects. The 1997 amendments to the Montana Water Quality Act increased the program's focus on meeting water quality standards and restoring beneficial uses. As a result, TMDL initiatives were integrated into the NPS program.

As discussed above, Montana has 91 "TMDL Planning Areas." Most watershed planning areas contain multiple impaired water bodies. Each planning area has watershed groups comprised of citizens who have an interest in the watershed. The DEQ is required by State law to consult with watershed groups during all phases of water quality restoration planning.

The DEQ has prepared an outline to provide direction and consistency in the development of water quality restoration plans. This seven step process involves: initial assessment (problem identification); source characterization (problem definition); target identification (goal setting); source allocation development (apportioning responsibilities); development of a long term monitoring plan; documentation of a water quality restoration plan; and identification of specific implementation details.

An implementation strategy is an integral part of the water quality restoration plan. The implementation strategy focuses on the voluntary use of BMPs (see below), but also includes a budget and a timeline.

There is no compilation of all of the activities funded under the 319 program. However, current 319 grant program information is available from the DEQ.[39]

BMPs

Montana's NPS program has produced and/or helped to fund several BMP publications. The two most detailed sets of BMPs are for the agricultural sector (using the NRCS's BMPs) and for forest practices (using Montana-developed voluntary BMPs).[40] Montana has also developed BMPs through their stormwater program (see below).

Implementation on Federal Land

There have been no on-the-ground restoration activities funded for BLM-initiated restoration activities. Several 319 grants (i.e. Willow Creek) have funded activities by local watershed groups on BLM lands. In addition, the BLM is an active participant on the 319 grant review panel and has worked as a watershed partner in several local watershed restoration groups.

Federal Consistency

The Federal consistency provisions of section 319 of the CWA authorize Montana to review Federal financial assistance programs and development projects for their effect on water

[39] Available at: http://www.deq.state.mt.us/wqinfo/nonpoint/319Grants.asp.

[40] The details of the agricultural BMPs can be found at: http://www.nrcs.usda.gov/partners/for_farmers.html, and the forestry BMPs are available at: http://www.dnrc.state.mt.us/conserve.html.

quality. If the State determines that an application or project is not consistent with the State Nonpoint Source Management Program and notifies the Federal agency of its concerns, the agency must make efforts to accommodate the State's concerns, or explain its decision to not make accommodations, in accordance with Executive Order 12372. Additionally, section 313 of the CWA requires Federal agencies having jurisdiction over property or facilities, or engaged in activities which may result in water pollution, to comply with State and local water pollution control regulations and authorities to the same extent as any non-governmental entity.

Because Montana has been delegated authority for the NPDES and §404 permit programs, State certification under CWA §401 does not apply to these activities. Montana's Federal consistency program focuses primarily on Federal Energy Regulatory Commission (FERC) hydropower licenses.

Enforceable State Laws/Policies/Programs to Limit NPS Pollution

Water Pollution Control Laws

Montana's water pollution control laws include some provisions applicable to nonpoint source discharges. A general provision prohibits discharges or placement of wastes that cause pollution, including pollution from nonpoint sources. The law also established a nondegradation policy that applies to certain nonpoint sources, though it does not apply to agricultural discharges covered under a groundwater management plan.

The water quality code makes it unlawful to "cause pollution … of any state waters."[41] "Pollution" is defined broadly and includes pollution from nonpoint sources.[42] The code also makes it unlawful to "cause degradation of state waters without authorization," and established a detailed nondegradation policy for State waters.[43] Under the non-degradation policy, degradation of high-quality waters may not be authorized without an extensive cost-benefit analysis and consideration of nondegrading options. However, several important activities are exempted from the nondegradation policy. These include: nonpoint sources existing on or before April 29, 1993; new nonpoint sources that follow "reasonable land, soil, and water conservation practices"; nonpoint source activities that cause short-term changes in water quality and result from streambed preservation activities or permitted water use; dam maintenance and repair that causes short-term changes in water quality, etc.[44]

Fish and Fisheries laws

The fish and wildlife code does not provide an enforceable authority for nonpoint source pollution.

Operational Requirements

Forestry Requirements

[41] Mont. Code Ann. § 75-5-605(a).
[42] Mont. Code Ann. § 75-5-103.
[43] Mont. Code Ann. §§ 75-5-605(d), 75-5-303.
[44] Mont. Code Ann. § 75-5-317(2). The detailed nondegradation regulations are found at Mont. Admin. R. § 16.20.701.

The forestry code required the creation of "streamside management zones" for forest streams.[45] A streamside management zone must encompass a strip at least 50 feet wide on each side of the water body measured from the high-water mark, and extending to include wetlands and areas that need additional protection such as steep slopes or erosive soils.[46] Within these zones, there are specific prohibitions on forest activities including off-road vehicle operation, clearcutting, road construction, etc.[47] Mont. Admin. R. § 36.11.301 et seq contains detailed regulations delineating the stream management zones and defining prohibited practices and site-specific alternative practices.

The forestry code also contains a section which encourages the use of best management practices and includes a requirement that notice be given prior to commencing any forestry practices.[48]

Agriculture and Grazing Requirements

The soil conservation code allows for the creation of soil conservation districts. These districts are authorized to formulate and propose soil and water conservation regulations, which are subject to approval by referendum.[49] Once approved, the regulations may prescribe specific agricultural practices for soil and water conservation within the district.

The Natural Streambed and Land Preservation Act requires that any "project" defined as the physical alteration of a stream resulting in change in the state of the stream, be approved by the local soil conservation district or board of county commissioners before commencing work.[50] The decision is base on multiple factors including: the effects on soil erosion and sedimentation; upstream and downstream flooding and erosion effects; streamflow, turbidity, and water quality effects; and effect on fish and aquatic habitat.[51]

It is also unlawful to violate any provision of a site-specific groundwater management plan.[52] Most of these provisions relate to the use of pesticides and fertilizers.

Earth-Disturbing Activities

Apart from any programs for the control of stormwater under the Federal CWA or general land use regulations such as zoning, the following State laws apply to earth-disturbing activities. First, the water quality code allows, but does not require, the creation of local water quality districts "to protect, preserve, and improve the quality of surface water and groundwater."[53] Local governments may establish such districts, which then develop local water quality programs that are implemented through local ordinances. The districts have the authority to assess fees for water use, although irrigation and livestock uses are exempt from these fees.[54]

Second, the legislature has enacted a law protecting lakeshores, and declared that "local government should play the primary public roles in establishing policies to conserve and protect

[45] Mont. Code Ann. § 77-5-301 et seq.
[46] Mont. Code Ann. § 77-5-301(8).
[47] Mont. Code Ann. § 77-5-303.
[48] Mont. Code Ann. § 76-13-131.
[49] Mont. Code Ann. § 76-6-15-701.
[50] Mont. Code Ann. § 77-7-101 et seq.
[51] Mont. Code Ann. § 75-7-112.
[52] Mont. Code Ann. § 80-15-402.
[53] Mont. Code Ann. § 7-13-4501 et seq.; Mont. Code Ann. § 75-5-311.
[54] Mont. Code Ann. § 7-13-4523.

lakes."[55] Under this law, projects that will "diminish the course, current, or cross-sectional area of a lake or its lakeshore must first secure a permit for the work from the local governing body."[56] Factors for consideration in issuing a permit include water quality, fish and wildlife habitat, navigation and recreation, public nuisance, and visual and aesthetic values.[57]

Finally, as discussed above, the Natural Streambed and Land Preservation Act requires that any "project" be approved by the local soil conservation district or board of county commissioners before commencing work.

Wetlands and 404 Permits

State implementation of 404

Montana has the authority from the EPA to administer the 404 dredge and fill permit program.

Additional State Laws/Policies/Programs for Wetlands

Montana has an active wetland protection program that is non-regulatory, informational, and presently focused on developing better wetland assessment methods.[58] The state (in cooperation with the EPA) also funds wetland conservation activities. These projects range from an Evaluation of Wetland Impacts in the State of Montana, to Developing Education and Information about Montana Wetlands, to a local partnership composed of local government, wetland ecologist and community volunteers to inventory wetlands for restoration and management needs. Wetland grant projects are solicited each fall and for approved projects, funding is available the following spring.

Stormwater Provisions

The State of Montana is the stormwater permitting authority for all lands in Montana, including BLM land, except for Indian country. Construction activity disturbing at least one acre requires a General Permit for Stormwater Discharge Associated with Construction Activity (permit number MTR 100000).[59] In Indian country within the State of Montana, the EPA is the permitting authority and requires the submission of permit number MTR 10000I.

The General Permit for Stormwater Discharge Associated with Construction Activity requires applicants to submit a Notice of Intent, prepare a Stormwater Pollution Prevention Plan (SWPPP), and file a Notice of Termination upon completion of the project. Links to these documents and additional information on Montana's stormwater program can be found on the DEQ's website.[60]

Montana has developed stormwater BMPs. These can be found in Montana Department of Water Quality – Stormwater Program – BMPs and Erosion Control Plans.

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[55] Mont. Code Ann. § 75-7-201 et seq.
[56] Mont. Code Ann. § 75-7-204.
[57] Mont. Code Ann. § 75-7-207, -208.
[58] Information on Montana's wetlands program can be found at: http://www.deq.state.mt.us/wqinfo/Wetlands/Index.asp.
[59] Available at: http://deq.state.mt.us/wqinfo/MPDES/swPermits/2002ConstGenPermit/FinalConstPermit02.pdf.
[60] See http://deq.state.mt.us/wqinfo/MPDES/StormwaterConstruction.asp for information on construction activities, and http://deq.state.mt.us/wqinfo/MPDES/StormwaterIndustrial.asp for information on industrial activities.