

BOARD OF ENVIRONMENTAL REVIEW
AGENDA ITEM
EXECUTIVE SUMMARY FOR
WATER QUALITY STANDARDS AMENDMENTS

AGENDA ITEM NO.: III.A.1.

AGENDA ITEM SUMMARY: The proposed rulemaking would amend rules to designate a portion of the Gallatin River as an Outstanding Resource Water (ORW).

LIST OF AFFECTED RULES: ARM 17.30.617 and 17.30.638.

AFFECTED PARTIES SUMMARY: The proposed designation of the Gallatin River from the Yellowstone National Park boundary to Spanish Creek as an ORW would prohibit new or increased point source discharges that would cause a permanent change of water quality. This includes individual and community waste water treatment systems or industrial sources that desire to discharge to the proposed ORW section of the Gallatin River or are determined to have a direct hydrologic connection to the Gallatin River.

SCOPE OF PROPOSED PROCEEDING: Issuance of a notice of supplemental rulemaking extending the comment period.

BACKGROUND: The Board received a petition from American Wildlands in December 2001 requesting the Board to initiate rulemaking to designate the mainstem Gallatin River from the Yellowstone National Park boundary to the confluence of Spanish Creek as an Outstanding Resource Water (ORW).

At the March, 2002, meeting the Board received comment on the petition and directed the Department to prepare an environmental impact statement (EIS) addressing the petition. The draft EIS was released for public comment in September, 2006. The comment period on the draft EIS closed on October 27, 2006. The final EIS was issued on January 9, 2007.

Notice of proposed rulemaking appeared in the October 5, 2006, Montana Administrative Register. The comment period on the proposed rulemaking closed on November 2, 2006. The Board received a number of comments objecting to the ORW designation on grounds that it would render a number of properties in the Big Sky area undevelopable. In response, the petitioners and several members of the development community commenced discussions regarding local and other actions that could eliminate the potential that an ORW designation would render properties undevelopable. They requested the Board to delay action on the rulemaking while they explored the feasibility of these options. The Board granted this request, and on March 22, 2007, published a notice of extension of comment period to July 2, 2007.

On July 2, 2007, the Board received comments that discussions were ongoing and had been expanded to include 18 groups and individuals. In addition, the groups had hired an engineering firm to prepare an engineering feasibility study for various approaches. The commentors requested that the Board further extend the comment period while the studies and discussions continued. The Board extended the comment period to January 4, 2008.

On January 4, 2008, the Board received from the Great Yellowstone Coalition a comment indicating that the feasibility study would be completed in May of this year and requested an additional extension of the comment period. The Board then extended the comment period to July 18, 2008.

On July 2, 2008, the Greater Yellowstone Coalition submitted testimony indicating that various interested parties had formed a collaborative called the "Wastewater Solutions Forum" and that the engineering firm was scheduled to present the feasibility study to the Forum on July 22, 2008. The Coalition requested that the Board further extend the comment period to facilitate the continuation of the collaborative effort. The Board extended the comment period to January 2, 2009.

On December 29, 2008, the Board received a comment letter, a copy of which is attached. The letter

indicates that Forum had received a draft feasibility study indicating that extending the wastewater hookups for the Big Sky Water and Sewer District wastewater treatment plant along a portion of the Gallatin River would be more effective in protecting Gallatin River water quality than the ORW designation. In the comment letter, the Greater Yellowstone Coalition requests the Board to again extend the comment period on the OWR rulemaking to allow the Wastewater Solutions Group to obtain public input and, if public input is favorable, attempt to secure funding for the project.

HEARING INFORMATION: The Board held a hearing on October 25, 2006.

BOARD OPTIONS:

The Board may:

1. Publish a supplemental notice extending the comment period;
2. Adopt the rule amendments as proposed or with modifications; or
3. Determine that it will not adopt the rule amendments, either affirmatively or by inaction.

DEQ RECOMMENDATION: The Department recommends that the Board extend the comment period to July 15, 2009.

ENCLOSURES:

The following information is attached to this summary:

1. Notice of Extension of Comment Period on Proposed Amendment
2. Public Comment

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF EXTENSION OF
17.30.617 and 17.30.638 pertaining to)	COMMENT PERIOD ON
outstanding resource water designation)	PROPOSED AMENDMENT
for the Gallatin River)	
)	(WATER QUALITY)

TO: All Concerned Persons

1. On October 5, 2006, the Board of Environmental Review published MAR Notice No. 17-254 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 2294, 2006 Montana Administrative Register, issue number 19. On March 22, 2007, the board published MAR Notice No. 17-257 regarding a notice of extension of comment period on the proposed amendment of the above-stated rules at page 328, 2007 Montana Administrative Register, issue number 6. On September 20, 2007, the board published MAR Notice No. 17-263 regarding a notice of extension of comment period on the proposed amendment of the above-stated rules at page 1398, 2007 Montana Administrative Register, issue number 18. On March 13, 2008, the board published MAR Notice No. 17-268 extending the comment period on the proposed amendment of the above-stated rules at page 438, 2008 Montana Administrative Register, issue number 5. On September 11, 2008, the board published MAR Notice No. 17-276 extending the comment period on the proposed amendment of the above-stated rules at page 1953, 2008 Montana Administrative Register, issue number 17.

2. During the initial comment period, the board received a number of comments opposing adoption of the proposed rule amendments on grounds that the amended rules would render a number of properties in the Big Sky area undevelopable. The draft environmental impact statement on the proposed rule amendments indicates that the rule amendments would not preclude full development in the Big Sky area if certain mechanisms, such as central sewers and advanced treatment, are implemented. However, the record did not indicate whether regulatory or other means to require or facilitate implementation of these mechanisms are feasible. At the close of the initial comment period, the board was notified that the original petitioners for this rulemaking and developers were discussing means of accomplishing this goal. For that reason, the board extended the comment period to July 2, 2007. During the second comment period, the board received comments indicating that the discussions had been continuing, that progress was being made, and that an engineering feasibility study was underway. The commentors requested further extension of the comment period. The board granted their request and extended the comment period to January 4, 2008. On January 4, 2008, the board received a comment indicating that the feasibility study will be completed in May of 2008 and requesting that the comment period be further extended. The board has granted this request and is extending the comment period to July 18, 2008. On July 2, 2008, the board received a comment indicating that the

MAR Notice No. 17-____

feasibility study would be completed in July and requesting a further extension of the comment period. The board has granted this request.

On December 29, 2008, the board received a comment indicating that the feasibility study indicates that extending wastewater hookups for the Big Sky Water and Sewer district wastewater treatment plant along the Gallatin River would be more effective in protecting the Gallatin River than adoption of the proposed rules. The commentor requested that the comment period be extended during a public participation process and a search for funding. The board has granted that request.

3. Written data, views, or arguments may be submitted to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana, 59620-0901; faxed to (406) 444-4386; or e-mailed to ejohnson@mt.gov, no later than July 15, 2009. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

4. The board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking action or need an alternative accessible format of this notice. If you require an accommodation, contact the board no later than 5:00 p.m., _____, 2009, to advise us of the nature of the accommodation that you need. Please contact the board secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or e-mail ber@mt.gov.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ _____
JOHN F. NORTH
Rule Reviewer

BY: /s/ _____
JOSEPH W. RUSSELL, M.P.H.
Chairman

Certified to the Secretary of State, _____, 2009.



Greater Yellowstone Coalition

P.O. Box 1874 • Bozeman, Montana 59771 • (406) 586-1593 • fax (406) 556-2839 • gyc@greateryellowstone.org

1983 – 2008

*Celebrating 25 Years
of Conservation Success*
December 29, 2008

Montana Board of Environmental Review
1520 E. Sixth Avenue
P.O. Box 200901
Helena, MT 59620-0901

Dear Board of Environmental Review:

On behalf of the Greater Yellowstone Coalition, thank you for allowing us this opportunity to comment on the proposed rulemaking for designating the upper Gallatin River as an Outstanding Resource Water (ORW). The Board has been very accommodating in keeping the public comment period open for such a long time.

As you know, the Board of Environmental Review originally requested public comment on the ORW proposal in October 2006. At that time, the Greater Yellowstone Coalition and other local conservation interests strongly supported ORW designation. However, because the Big Sky community remains deeply divided over the proposal, and the Montana Legislature has been reluctant to press forward with it, we agreed to participate in a new collaborative process to see if we could find a way to reduce nutrient pollution in the Gallatin River without curtailing development in Big Sky.

Today, I am happy to report that that collaborative process has made significant progress towards its goal. In November, DOWL HKM Engineering of Billings released a draft feasibility study that we and the other participants in the Wastewater Solutions Group had commissioned. The goal of the study was to evaluate the feasibility of hooking up the Gallatin River corridor from the Big Sky turnoff to The Corral Bar and Motel to the existing wastewater treatment plant in the Meadow Village. The study concluded that the capital cost of this option would be about \$10.384 million. More importantly, it found this option would reduce both nitrate and phosphorus loading in the Gallatin River by roughly 95 percent. By comparison, ORW designation would reduce nitrate loading by 10 percent, and phosphorus loading by 84 percent (see table below).

Scenario	Nitrate Loading to Gallatin River (pounds/yr)	Phosphorus Loading to Gallatin River (pounds/yr)
Existing conditions	4,456	2,524.5
ORW designation	4,007.8	400.7
Central sewer system	159.7	159.7

People protecting the lands, waters, and wildlife of the Greater Yellowstone Ecosystem, now and for future generations.

Idaho Falls Office • 162 North Woodruff • Idaho Falls, Idaho 83401 • (208) 522-7927 • fax (208) 522-1048

Cody Office • 1285 Sheridan Ave., Ste. 215 • Cody, Wyoming 82414 • (307) 527-6233 • fax (307) 527-6290

Jackson Office • P.O. Box 4857 • Jackson, Wyoming 83001 (307) 734-6004 • fax (307) 734-6019

www.greateryellowstone.org



The Wastewater Solutions Group plans to share the DOWL HKM study with the local public over the next 3-6 months. If the community appears supportive of the preferred alternative (i.e., hooking up the river corridor to the existing wastewater treatment plant), we will then try to secure state and federal grants to help pay for the project. At some later date (2010 at the earliest), we will ask Big Sky residents to vote on the proposal. Annexing the river corridor into the Big Sky Water & Sewer district would require a vote of the district's members.

At this point in the process, it is still too way early to tell if the community will support this concept. Therefore, we ask that the BER keep the public comment period open on the proposed rulemaking for designating the Gallatin River as an ORW. If the Big Sky community does not support the idea of hooking up the river corridor to central sewer, we would like the option of ORW designation to remain on the table as a feasible alternative for protecting water quality in the Gallatin River.

Thank you again for keeping the public comment period open on the proposed rulemaking. Please feel free to contact me via email (sbosse@greateryellowstone.org) or phone (406-556-2823) if you have any questions.

Sincerely,



Scott Bosse
Director of Aquatic Conservation