

# DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

## INTERIM WATER POLICY COMMITTEE

March 12 & 13, 2008

### House Bill 831 Update

#### I. Applications Received under HB 831

- a. Eleven applications (see attached table)
- b. Three were filed under 85-2-360(6), they are refilled applications that were returned after the TU v. DNRC decision was issued. Will retain original priority date.
- c. One of the 3 above has been terminated for lack of response to deficiency letter (90-days)

#### II. Administrative Rules

- a. **Net Depletion:** Adoption Notice for rules defining net depletion and analysis requirements was published January 31, 2008 making the rules **effective February 1, 2008.**
- b. **Filing Fees:** Adoption Notice for rules increasing some filing fees for various water right applications, forms and petitions and removing Form 627 was published February 14, 2008 making them **effective February 15, 2008.**
- c. **Correct and Complete Objections:** Rules clarifying the requirements for a correct and complete objection to new permit and change applications were published October 4, 2007. These rules are not limited to applications in closed basins.
  - i. A hearing was held November 5, 2007;
  - ii. Comments were received from seven parties
  - iii. Primary comment issues include:
    1. Requiring each person objecting based on adverse affect to his water right, must file a separate objection.
    2. Requiring an objection to contain facts showing how or why the person believes that one or more of the criteria are not met; that the time frame does not allow a person enough time to retain experts and utilize discovery to acquire sufficient facts to meet the requirement
    3. Concern with limiting the objector's participation at a hearing to the specific criteria to which they identified in their objection. That this would not allow an objector to raise other criteria if other issues surface through discovery.
    4. Rule explains that a deficient objection will be terminated if not corrected within 15 days of notice. This may be too short of time period. However, the law under MCA 85-2-308 sets this time limit.
  - iv. Adoption Notice reflecting considerations of the public comments is planned to be published March 27, 2008 which would make them effective **March 28, 2008.**

- d. **Contested Case Hearings:** Rules updating the existing hearing procedures are being drafted and are expected to be published this spring. These rules would affect all permits and change applications are not limited to closed basins.
- e. **Hearings conducted under MCA 85-2-310 and 314:** A hearing may be requested by an applicant where the Department has proposed to modify or deny a permit or change application through the issuance of a Statement of Opinion where no contested case hearing with objectors was held. In addition, where the Department proposes to revoke a permit or change authorization, the water right holder as an opportunity for hearing. Rules establishing the procedures for conducting these hearings will be drafted over the next 6 months.
- f. **Correct and Complete Application Rules:** Original rules became effective January 1, 2005. Through two years of operating under the rules, needed clarifications and updates have been identified. Drafting will begin later this spring.
- g. **Historic Consumptive Use:** An applicant for a change in appropriation water right is required to identify the historic diverted flow rate and the historic consumptive use of the existing appropriation water right. With more original owners and persons knowledgeable of the historic use and operation passing on, new owners are having great difficulty in providing information on historic use. What part of the historic use was consumed by the crop is especially difficult to estimate. The Department's technical and program staff are looking at developing guidelines for estimating historic consumptive use that could be used to develop a rule that would provide a starting point for applicants. This might be a table, by climatic area, that would contain typical crop consumption figures for existing irrigated lands with pre-1973 water rights. The Department will likely consult with other interested persons and professionals in developing a proposed rule and conduct a couple public scoping meetings to gain input.

### III. Recruitment of New Staff Associated with HB 831

- a. Attorney position was offered and applicant turned it down. Currently renoticing vacancy, closes March 27, 2008
- b. Geohydrologist hired October 1, 2008.
- c. Water Resource Specialist hired February 4, 2008.
- d. Water Resource Technician position to be classified and vacancy noticed by first of April.

### IV. HB39 – Automation of Water Right Ownership (effective July 1, 2008)

- a. Passed in the 2007 Session to automate updating the ownership of water rights
- b. During the adjudication fee collection period in 2006 as a result of HB22, DNRC updated approximately 10,000 ownership records
- c. Also passed in the 2007 Session, HB473 which replaced the adjudication fee with general fund money
- d. In order to maintain current ownership records, DNRC and DOR have matched legal land description records and are entering geocode numbers into the water right records. [over 90% match of geocodes to water rights]
- e. As property changes hands, DOR will send updated owner names with their geocodes so DNRC can electronically update the water right with the new owner's name.