

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION



GREG GIANFORTE, GOVERNOR

1539 ELEVENTH AVENUE

STATE OF MONTANA

DIRECTOR'S OFFICE: (406) 444-2074
FAX: (406) 444-2684

PO BOX 201601
HELENA, MONTANA 59620-1601

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Environmental Quality Council
Legislative Environmental Policy Office
State Capitol Building
1301 East 6th Avenue, Room 171
PO Box 201704
Helena, Montana 59620-1704

Chairman Gunderson and the Environmental Quality Council:

In accordance with Section 75-1-314, MCA, the Department of Natural Resources and Conservation submits the attached Enforcement and Compliance Report for your review. The report contains information specific to each division in the department with enforcement and compliance responsibilities.

Should you have any questions or comments, please contact our department at (406) 444-2074.

Sincerely,

A handwritten signature in black ink that reads "Amanda Kaster".

Amanda Kaster, Director
Department of Natural Resources & Conservation

Enclosures



Enforcement and Compliance Report

Section 75-1-314, MCA

Water Resources Division

Adjudication, Enforcement, and Distribution Bureau

Enforcement

The Montana Water Use Act provides for judicial enforcement under § 85-2-114, MCA, to address illegal water use, the waste of water, someone preventing water from moving to another person having a prior right to use the water, or other violations of the provisions of Title 85, chapter 2. Enforcement requires significant staff and attorney time.

Implementation of statewide enforcement is limited by statute and available DNRC resources. Investigating and initiating enforcement actions through judicial proceedings requires significant legal and water right staff time that the Department does not currently have. Without additional FTE and funding dedicated to enforcement, DNRC has limited ability to enact enforcement under § 85-2-114, MCA.

DNRC relies on water use complaints from water users to identify situations where enforcement may be necessary. Most complaints involve neighbor disputes which have minor benefits, if any, to the public interest on a larger scale. DNRC's past and current approach has been to try to bring illegal water use into compliance with the water use act through education and voluntary compliance. DNRC has determined this is the best balance in many cases due to general lack of understanding of Montana water statutes

by the public and the limited staff resources and time it takes to see a judicial enforcement case through the process. DNRC has received an average of 26 written complaints per year over the last 16 years. The Missoula Regional Office has received the most complaints with an average of 7 per year. DNRC prosecuted one district court judicial enforcement in conjunction with the Gallatin County Attorney in 2021/2022.

It is important to note that the same enforcement tools DNRC has are available to private parties (District court). It is also important to note that DNRC does not have jurisdiction over ditch disputes; jurisdiction resides with the District Court on this issue.

Distribution

Water distribution is administered by the District Court pursuant to §§ 3-7-212, 85-2-406, and 85-5-101, MCA. DNRC's role in distribution projects is to create water distribution tabulations and maps for the District Court. The water distribution tabulations contain all information needed for a water commissioner to distribute water within the project area. Water distribution tabulations are commonly referred to as "redbooks."

DNRC has compiled distribution tabulations and created maps for a total of 86 different water distribution projects. During the summer of 2024, there are 59 active distribution projects in the state. This consisted of 50 recurring projects and 9 new projects.

Water Sciences Bureau

Water Measurement Program

The Montana Water Measurement Program was established by the 1991 legislature to identify chronically dewatered watercourses. The program provides water and snowpack data, water right information, and water measurement expertise to watershed groups and user groups to improve local water resource management. The program seeks to reduce adverse impacts to beneficial uses, such as agriculture, municipal, fisheries and recreational uses, and reduce conflicts between competing uses.

The Musselshell River, the Teton River, and Mill Creek, a tributary of the Yellowstone River, are the three watercourses formally regulated by the program. Compliance and enforcement efforts in the Musselshell basin have improved with the creation of the "Musselshell River Distribution Project," and involvement of the District Court. As a result, compliance is nearly 100 percent on that river system.

The program continues to analyze and model Georgetown Lake water supply for the benefit of Granite County, Flint Creek Dam Advisory Committee, FWP, irrigator groups,

power generation, and other interested parties. Program staff have also assisted Beaverhead Conservation District staff to install and operate recording gages on the Red Rock River as part of an effort to better understand the interplay between surface and shallow groundwater resources.

Water Commissioner Training

DNRC Water Sciences Bureau has developed an educational program for water commissioners that provides annual training on commissioner responsibilities and water measurement techniques. This free training is available to anyone interested in the accurate measurement and distribution of water in Montana including state and federal water managers, water commissioners, ditch riders and dam tenders, District Court, and Water Court personnel.

Data Program

DNRC Water Sciences Bureau maintains the state stream gage network. The network currently consists of 105 real-time and non-real time monitoring sites. Monitoring sites include both real-time and seasonal surface water streams, reservoirs, ditches, canals, and groundwater wells. Data are used by several different water user groups, including water managers and commissioners, irrigators, municipalities, as well as the general public and recreationalist. The 2023 legislature approved funding to expand the state stream gage network by 32 real-time surface water locations. As of August 2024, 21 new real-time gages have been installed. The addition of real-time stream flow data enables the State of Montana to better manage our water resources.

Water Operations Bureau

Board of Water Well Contractors

The Board of Water Well Contractors program is designed to reduce and minimize the waste and contamination of ground water resources within the state by reasonable regulation and licensing of drillers and constructors of water wells and monitoring wells. Water well construction standards are set in the administrative rules and enforced to ensure compliance with water well and monitoring well construction.

The Board directs investigations of complaints of unlicensed drillers and violations of water well construction standards submitted by the public, regulatory agencies, and other drillers. The Board holds hearings on complaints and as warranted, prescribes

education, remedial action, bond forfeiture, license suspension, and license revocation. The program manager administers training, testing, licensing, and re-licensing of more than 200 water well drillers, monitoring well constructors, water well contractors, and inactive licenses in Montana.

Complaints to the Board are analyzed and field investigated. Typically, there is voluntary compliance or correction of a construction standard based upon the findings of the field investigator. Complaints that result in some remedial action by the driller have occurred on less than 1 percent of all water wells drilled in a year.

Dam Safety Regulatory Program

The Dam Safety Program (DSP) is designed to ensure that dams with potential for loss of life downstream are operated and maintained in a safe manner. A dam with potential for loss of life downstream is classified as a “high hazard” dam. This classification reflects what is located downstream of the dam and is not a description of the dam condition. Primary regulatory responsibilities include issuing Operation Permits and Construction Permits on high hazard dams and conducting downstream dam Hazard Classifications to determine if a dam has loss of life potential.

When the DSP issues an Operation Permit, it is an assurance to the public that the dam poses an acceptable level of risk. Secondary regulatory responsibilities include assistance to owners with program compliance and responding to complaints on non-high hazard dams. Permitted dam owners include irrigation districts, private irrigation companies, cities, counties, State of Montana, and private individuals. Dams under federal jurisdiction are exempt from regulation.

There are two key documents available that further describe Dam Safety Regulation in Montana:

1. **DAMS IN MONTANA:** DISCUSSES THE DISTRIBUTION, OWNERSHIP AND OVERSIGHT OF DAMS. <http://dnrc.mt.gov/divisions/water/operations/docs/dam-safety/publications/DamsinMontana12282018.pdf>
2. **Intro to the Montana Dam Safety Program:** Provides an overview of the Dam Safety Program laws, rules, responsibilities, staff AND compliance approach <http://dnrc.mt.gov/divisions/water/operations/docs/dam-safety/publications/dsp-brochure-4-22-2021-web2.pdf>

Compliance Tools

The DSP utilizes a *Compliance Tracking Program* that keeps track of all permitting deadlines. Weekly automated reminders are sent to staff.

Technical Notes are Montana specific documents that provide engineers guidance for evaluations and design of dams. <http://dnrc.mt.gov/divisions/water/operations/dam-safety/technical-notes> . The DSP recently added guidance for conducting a seismic

analysis of dams and guidance for navigating the design review projects for dam construction.

The high expense associated with dam maintenance and rehabilitation are obstacles to dams meeting safety and regulatory standards. The DSP works with dam owners to identify potential funding resources for dam rehabilitation and maintenance.

<http://dnrc.mt.gov/divisions/water/operations/dam-safety/funding-resources> .

Non-compliance with Annual Requirements

Dam owners are required by their *Operation Permit* to complete an annual “owners” inspection. It is often a challenge to get these completed, often requiring multiple reminders from dam safety staff. The DSP has found the best compliance tool is for local regional engineers to remind dam owners their inspection is due soon (or overdue).

Administrative rules also require that Emergency Action Plans (EAPs) be updated annually. Many dam owners fail to meet this requirement. In the past, the DSP had a dedicated staff member compensated with a grant from FEMA to assist owners meet this requirement. Due to decreases in the grant award, the DSP could no longer fund that position. The DSP has subsequently changed their procedure to facilitate compliance. At Operation Permit renewal time, the dam owner is required to have an updated EAP. The other years, the responsibility to meet this rule lies with the dam owner.

The DSP frequently reminds owners that there could be increased liability associated with failure to meet annual requirements. The DSP actively tracks annual requirement compliance but does not have the resources currently to take enforcement action against dam owners that fail to comply.

Non-compliance with Five Year Inspection Requirements

Dam owners are required to renew their *Operation Permit* on a 5-year cycle. The *Operation Permit* renewal requires an inspection be performed by a licensed engineer. The engineer summarizes the findings from their inspection and develops a report that details operation, maintenance, and/or rehabilitant requirements. It is challenging to get inspections and reporting completed within statutory deadlines and often requiring multiple reminders from the DSP.

The DSP develops *Operation Permit* conditions based on the owners engineer assessment of the dam. These conditions have various enforcement criteria based on the associated risk. The DSP actively tracks compliance with the *Operation Permit* conditions. If high risk permit conditions are not met, the DSP will take actions such as requiring emergency action plan exercises, reservoir pool restriction or full drainage of the reservoir. Noncompliance with DSP requirements may lead to revocation of a dam’s Operation Permit.

The DSP reminds owners there is increased liability and possible civil penalties associated with failure to meet permit conditions and/or revocation of *Operation Permit*. When an *Operation Permit* is revoked, the DSP will notify state Disaster and Emergency Services, the county, local communities, and local emergency services of the possible risk.

The DSP program works with out of compliance dam owners to get their facilities back into compliance with state law and industry standards. This can be a multiyear process as the dam owners work to find funding for these complex and costly projects.

State Floodplain Mapping Program

The primary objective of the Floodplain Mapping Program (FMP) is to develop and implement a comprehensive mapping plan of the state's rivers, waterbodies, and drain ways for the delineation of designation of floodplains and floodways, as prescribed in Montana Annotated Code (MCA) 76-5-201.

The DNRC's floodplain mapping section has been partnering with FEMA and interested stakeholders to accomplish its mission of identifying and mapping flood hazards to alleviate flooding threats to life and health and reduce private and public economic losses.

It is currently estimated that roughly 14,600 miles of the state's 73,000 miles of rivers and streams have regulatory mapped floodplains. Roughly 55 percent of the state's mapping portfolio is currently being updated. Twenty-four (24) counties and two (2) reservations have had their paper Flood Insurance Rate Maps (FIRM) converted to a modernized digital format. Modernizations for thirteen (13) additional counties are underway along with several river corridor floodplain study updates.

The FMP does not enforce or oversee compliance with floodplain regulations, nor do they approve floodplain permit applications. Enforcement is administered at the county or community level. The FMP does assist communities with the technical review of permit applications. This requires a large amount of staff time from the FMP, the Floodplain Management Community Assistance Program, and the Regional Engineer program.

Floodplain Management Community Assistance Program

The Floodplain Management Community Assistance Program (CAP) is tasked with reviewing and approving local proposed floodplain regulations to assure minimum state and federal standards are met. CAP is also tasked with reviewing community administrative and enforcement procedures for continued compliance with local regulations. The National Flood Insurance Program (NFIP) provides CAP program funding for community oversight, outreach activities, training events, technical reviews,

and administrative assistance to 137 local governments. Participating NFIP communities have adopted and are regulating building and development within the Special Flood Hazard Area (SFHA) and/or the Regulated Flood Hazard Area (RFHA) as prescribed in local regulations.

Program staff conduct approximately 65 community audits annually to verify compliance with the NFIP and state minimum standards. Each participating community is also contacted annually to verify community information and needs. FEMA administers the NFIP and has the authority to put communities on probation or sanction for failure to implement and enforce local regulations. If a community is sanctioned, federally backed flood insurance is no longer available to residents within the community. Disaster and federally backed grant assistance may be significantly reduced or unavailable for sanctioned communities. Such action by FEMA would result in the inability of banks or other lending institutions to sell home mortgages on the secondary market.

CAP does not enforce or oversee compliance with floodplain regulations, nor do they approve floodplain permit applications. Enforcement is administered at the county or community level. The CAP does assist communities with the technical review of permit applications. This requires a large amount of staff time from the CAP, FMP, and the Regional Engineer program.

Forestry & Trust Lands Division

The DNRC's Forestry and Trust Lands Division (FTLD) has three major functions: land management, forestry, and fire response. The land management functions are not regulatory per se, but rather involve the enforcement of various contract provisions that are part of leases, timber sales, or other authorizations for the use of State Trust Land. The Division manages resources and uses on State Trust Land for the benefit of Common Schools and other endowed institutions under the direction of the Board of Land Commissioners (Land Board). Trust Land Management (TLM) is divided into the following four bureaus: agriculture and grazing management, forest management, minerals management, and real estate management. Collectively, TLM manages 5.2 million surface acres and 6.2 million subsurface acres of state trust land for 12 trust beneficiaries. The Division is also responsible for planning and implementing various forestry programs and fire protection. These responsibilities are divided into the following Bureaus: fire protection, forestry assistance and good neighbor authority. Within the Forestry Assistance Bureau resides the Division's only true regulatory function, Forest Practices.

Forest Management Bureau

At any one time, the bureau has approximately 50 active timber sale contracts. The program sells approximately 60.0 million board feet (MMbf) of timber annually and

approximately 90 to 95 percent of the program's volume is under contract via timber sale contracts. Timber sale contracts represent agreements for volume over 500 thousand board feet (Mbf) of green or salvage timber while timber permits represent agreements under those volume amounts.

Non-compliances

Each timber sale, permit, and procurement contract is administered by trust lands staff members who regularly visit sites and complete comprehensive inspections of operator activities using inspection monitoring forms or other quality assurances provided for in the specified contract.

Like other land management agencies, Trust Land Forest Management Program activities must comply with regulations overseen by other regulatory agencies or divisions including Montana Department of Environmental Quality, Montana Fish Wildlife and Parks, and Montana DNRC Forestry Division. Forest Management Program Administrative Officers inspect compliance not only with Program stipulations and specifications, but also with regulations enforced by the above-mentioned regulatory agencies.

Over the past two years, one violation of the Streamside Management Zone (SMZ) Law enforced by the DNRC Forestry Division was reported on forested state trust lands. The reported violation occurred on DNRC's McCully Ridge timber sale on the Plains unit of the northwestern land office. In this situation, the SMZ was improperly marked and as a result, trees were cut more than tree retention requirements under the SMZ law. This violation was self-reported to DNRC Forestry Division by the Trust Lands forest officer. Required mitigation measures included fully suspend all trees felled across the stream and to remove any slash deposited in the stream as soon as feasible. The violation resulted in no fines.

Over the past two years, no timber sale contracts, timber permits, or forest management related procurement contracts have been terminated because of non-compliance with rules or regulations.

Enforcement Efforts

There are no instances of unresolved non-compliances.

Real Estate Management Bureau

Regulated Community

Real Estate Management Bureau does not have a regulated community per se, but rather manages a portfolio of leases, easements, and licenses for various uses such as residential and commercial. Other entities responsible for regulating these uses include local government, the Department of Environmental Quality, Department of Fish Wildlife and Parks, and any other agencies responsible for the development of land uses and the resultant impacts.

Property Management Section

This Section oversees surface leasing on the 15,289 acres of trust land classified as "Other," in addition to Land Use Licensing secondary uses on other land classifications. Land classified as "Other" is defined as all trust land that is not agricultural, grazing, or forest land. There are two leasing programs for activity on land classified as "Other:" the residential leasing program and the commercial leasing program.

Residential Leasing Program (Cabin Site and Home Site Leases)

Residential leases are typically issued for 15-year terms. As of August 21, 2024, there are currently 488 lots that are designated for residential leasing. Of the 488 lots, seven have never been leased and 45 have previously been leased but have been cancelled for non-payment. The resulting vacancy rate is 9.2 percent.

The Department is actively selling cabin sites through the Land Banking program in accordance with MCA 77-2-318. As cabin sites are sold, the number of lots in the leasing program is reduced, and the vacancy rate fluctuates. Because this is an ongoing program, these inventory numbers often change from month to month.

Non-Compliance – Lease Payment

If a lease invoice is not paid after 30 days delinquency, the lease is cancelled. A notice of cancellation is mailed to the lessee via certified mail informing them that the lease has been cancelled for non-payment. The notice of cancellation provides the lessee an opportunity to request a hearing, and the option to reinstate the lease for a \$500 fee, plus outstanding rent, if paid within 30 days.

In FY24, two residential leases were cancelled for non-payment.

Non-Compliance – Physical Review

All residential leases receive a physical inspection every five years to ensure lease compliance. The inspections are done in person on the lease site. A standard physical inspection form is completed by staff in the field and submitted to the Real Estate Management Bureau. Any management issues discovered during the physical inspection are addressed by field staff, typically through a letter to the lessee outlining violations and establishing time frames for correction. If a lease is expiring that has had repeated lease violations, the lease may not be renewed, or may be renewed for a shorter term than the typical 15-year renewal. The shorter lease term allows time for the lessee to correct violations and show improvement in the management of the lease before cancellation. In FY24 no leases were cancelled for non-compliance.

Enforcement – Improvements Assumption

Improvements upon an active residential lease are owned by the lessee. When a residential lease is cancelled, the former lessee retains ownership of the improvements under certain conditions. All residential leases provide conditions for the improvements upon cancellation, which include retained ownership for a period for the former lessee to attempt to sell the improvements to an incoming lessee, after which the State assumes ownership of the improvements on behalf of the trust beneficiary of the underlying land. Leases issued prior to 2010 provide for a two-year period. All leases issued after 2010 provide for a three-year period.

In addition to lease language, Administrative Rules of Montana (ARM) for the cabin site leasing program provide that the former lessee has a limited right to remove the improvements or be compensated for the improvements by a new lessee. Improvements that are not removed or sold in accordance with the ARM result in trust assumption and ownership of all improvements. The ability to remove or seek compensation for improvements is only available if the former lessee has continued to pay all taxes and any other applicable assessments and is limited to a period of up to three years after the date of cancellation or abandonment. If after three years there is no new lessee and the improvements have not been removed, the department will provide written notice to the former lessee granting 60 days for removal of remaining improvements and an opportunity to request a hearing. After that time, the improvements will become the property of the trust.

In FY24, the Bureau sent no notices of state assumption to former lessees.

Commercial Leasing Program

Commercial leases are issued for up to 99 years and are issued based on a Request for Proposal Process. There are currently 144 active commercial leases, including nine

options to lease. Lease terms are negotiated between field, Bureau, and legal staff to establish lease fees that provide full market value to the trust beneficiaries. The lease fee may not be less than the amount described in Section 77-1-905 of the MCA.

Non-Compliance – Lease Payment

If lease fees are not paid, the lease is cancelled. A notice letter is mailed to the lessee, informing them that the lease has been cancelled for non-payment, and offering the lessee an opportunity to have a hearing. This letter also offers an opportunity to reinstate the lease for a \$500.00 fee, if paid within 30 days, unless the lease itself provides for an alternative recourse for non-payment. No commercial leases were cancelled for non-payment in FY24.

Non-Compliance – Physical Review

Unless the commercial lease specifies a different physical review schedule, commercial leases receive a physical inspection every five years to ensure lease compliance. The inspections are done in person on the lease site. A standard physical inspection form is completed by staff in the field and submitted to the Real Estate Management Bureau. Any management issues discovered in the physical inspection are addressed by field staff, typically through a letter to the lessee outlining any violations and establishing time frames to correct such violations. Depending on the scale of the violations, the Real Estate Management Bureau may cancel the lease, or elect to renew the lease for a shorter-term, or not to renew the lease at all. The lease itself may also provide for remedies for lease violations. No commercial leases were cancelled for lease violations in FY24.

Rights-of-Way/Easements

Upon approval by the State Board of Land Commissioners (the Land Board) the Department of Natural Resources and Conservation (DNRC) has authority to process, issue, and reciprocate easements across State trust lands for a variety of uses, pursuant to §77-1-617, MCA (Reciprocal Access), and §77-2-101, MCA. Legal documents issued by DNRC contain special provisions and conditions for use, including but not limited to, reclamation after initial construction is completed, weed control, road maintenance, and compliance with any other permits that may be required by other state or federal agencies.

Easements are also subject to a reversionary clause, under which they may be terminated if the legal easement holder has not utilized the easement for its granted use within a period of five years.

In FY24, the Land Board approved, and DNRC granted, 88 easements for a variety of uses, including but not limited to, private access roads, state highway projects, new

utility installations, new water, oil, and gas pipelines, and existing (historic) private access roads. Prior to receiving approval from the Land Board, DNRC staff inspected, and prepared environmental analysis documents associated with new installations and construction. Existing (historic) structures are excluded from environmental analysis by statute.

Compliance – Physical Review

Easements located across State land are periodically inspected by local field office staff in conjunction with their surface lease management inspections or timber sale related activities. Easements are also reviewed based upon receipt of requests for assignment of rights associated with easements. Common examples of possible enforcement actions resulting from these inspections are reclamation and re-seeding of a buried utility facility and weed control measures on access roads.

Compliance – Enforcement

In FY24, no easement holders were found to be in violation of any conditions or provisions of their legal easement document, and therefore no enforcement actions were undertaken.

Agriculture and Grazing Management Bureau Regulated Community

Ag and Grazing does not have a regulated community per se, but rather entities with which we have leases. The program is responsible for managing the agriculture and grazing resources on approximately 4.7 million acres of trust lands statewide. Currently there are 8,900 leases covering 4.2 million acres of grazing lands and 589,000 acres of agricultural lands, which includes cropland, hayland and lands enrolled into the Conservation Reserve Program (CRP). In addition, the program manages 197 grazing licenses on classified forest lands covering nearly 156,000 acres. Leases are typically issued for ten-year terms.

Non-compliance – Physical Review

As required by law (§77-6-101 and §77-6-201, MCA), leases are inspected once during the lease term, normally the year prior to expiration.

Non-compliance – Enforcement

Any management issues identified during the lease inspection are addressed through a shortened term for the new lease, special lease conditions, or lease non-renewal. In FY23, 9353 leases with 1,402 tracts covering 497,542 acres were inspected for lease renewal. Of those leases, 13 were renewed with 5-year terms and 35 had special lease conditions to address identified issues. The most common special lease conditions required development and implementation of cropland, grazing land, or a weed

management plan. In FY24, 911 leases with 1,395 tracts covering 453,109 acres were inspected for lease renewal. Of those leases, 12 were renewed with five-year lease terms and 22 had special lease conditions to address identified issues. One lease was non-renewed due to management non-compliance. As with FY 23 leases, the most common special lease conditions required development and implementation of cropland, grazing land, or a weed management plan.

Non-compliance – Lease Payment

Payment deadlines for Grazing & Agriculture invoices are defined in Statute 77-6-506. The payment deadline for grazing invoices is March 1st of every year. There is a 30-day period in which payments can be submitted with a \$25 late fee per lease. If payment is not made by April 1st the lease is cancelled. For agriculture invoices, the payment is due November 15th of each year. After this date, a \$25 late fee is assessed for each lease. If total payment, including the late fee, is not postmarked by December 31st, the entire lease is cancelled.

In FY 23, one lease was cancelled for non-payment of grazing and there were no leases cancelled for non-payment of agriculture. In FY 24 there were no cancellations for non-payment of grazing and there were three leases cancelled for non-payment of agriculture. Two of these were reinstated and one was not paid by reinstatement deadline and was advertised for competitive bid.

Recreational Use and Public Access Program

Community

The regulated community for the Recreational Use and Public Access Program includes all members of the public that recreate on trust land. Public recreation is allowed on legally accessible trust land with the appropriate license.

As of FY24, per HB 521 (2023), all general recreational use activities on state trust land are authorized through the conservation license sold by the Department of Fish, Wildlife & Parks (FWP). The conservation license is a prerequisite license for all hunting and fishing in the state and can be purchased separately. In FY24, 560,775 Conservation Licenses were sold.

Other recreational uses such as, trapping, commercial, and concentrated recreational uses, including outfitting, are authorized under Special Recreational Use Licenses (SRUL). Currently, there are 296 active SRULs across the state.

Compliance

FWP Game Wardens enforce trust land recreational use law and rules. Per HB 521 (2023), all violations of general recreational use rules are processed by FWP Enforcement Division through the county court system. In recognition of the new conservation license requirement for general recreation, FWP issued warnings to

individuals recreating without a conservation license for their first offense. Seven formal warnings were issued for failure to possess a conservation license. FWP issued four citations and 11 formal warnings for other trust land recreational use violations under title 77 (State lands). This is in addition to enforcement efforts under title 87 (Fish and Wildlife), title 23 (Parks, Recreation, Sports, and Gambling), title 45 (Crimes), title 61 (Motor Vehicles) and title 75 (Environmental Protection). In all, FWP issued 102 criminal citations and 144 warnings on state trust land in FY24.

The DNRC may pursue civil penalties for violations of rules that govern special recreational use. Any collected civil penalty is distributed to the general fund. In FY24, the department did not assess any civil penalties.

Efforts to Promote Compliance and Education

In FY24, the department entered into an agreement with FWP, as contemplated in HB521 (2023), to simplify the licensing requirements for general recreational use of trust land, FWP managed fishing access sites and wildlife management areas. General recreation of these lands is now authorized through a single conservation license sold by FWP. This promoted compliance by simplifying the permitting process and reducing the number of licenses required to use trust land for various recreational activities. The license requirement is now easy to understand and explain.

In FY24, DNRC completed an audit of legally accessible trust lands. This information will be used to publish a public access map in the fall of 2024. The map will help promote compliance by making legal access easier to see and understand.

Looking forward: the recreational use program has initiated rulemaking to eliminate conflicts between rule and statute that apply to recreational use of trust land, and to align expectations for food storage across all state land. The program is also standardizing recreational use signs to promote understanding and recognition of trust lands, and to streamline access to relevant rules and regulations.

Minerals Management Bureau

The State School Trust owns 6.2 million acres of mineral estate lands. However, mineral production occurs only on a small fraction, currently 221,000 acres. These are managed through the issuance of mineral leases, primarily for oil, gas, and coal. Producing leases currently total 580 for oil and gas, and 6 for coal. All operations on these leases are regulated by the Board of Oil and Gas Conservation (BOGC) and the Department of Environmental Quality (DEQ). They inspect and take enforcement actions on state-owned lands in the same manner as for private and/or federal lands that are under their regulatory jurisdiction. DNRC staff also inspect state trust lands with active operations,

though our role is that of a "landowner" and not in a strict regulatory capacity. DNRC activity is summarized below:

Oil and Gas

New Wells

New activity encompasses both wells and related infrastructure. In fiscal year 2022 and 2023, there were five new wells drilled on state trust lands.

Existing Wells

As of August 2024, there were 241 oil and 370 gas wells producing on state trust lands. There were also 57 active water injection wells (11 disposal and 46 enhanced recovery). These wells are located within 5 FTLTD field unit office management areas across central, southern, and eastern Montana. BOGC staff inspect all wells as appropriate pursuant to their regulatory oversight authority. DNRC staff inspect wells located on state lands on a five-year basis, primarily in conjunction with their surface lease management inspections. The number inspected varies with their surface inspection schedule. Wells are also targeted for DNRC staff inspection based on information gathered during routine inspections and/or information provided by BOGC inspectors. Common examples of possible enforcement actions arising from DNRC inspections are weed control, reclamation status, or revegetation success.

Coal

New Operations - None

Existing Operations

Ongoing surface mining operations are being conducted on six state leases. These operations are closely monitored by the DEQ Coal Bureau's field staff. DEQ staff contacts DNRC whenever a change in operational status occurs. DNRC staff typically inspect operations as needed in conjunction with DEQ staff when operations on state lands advance into final reclamation activities. Because DEQ regulatory encompasses all lands disturbed by coal operations, no enforcement actions by DNRC staff are required.

Other Minerals

There are currently 53 gravel permits on state trust land. These operations are closely monitored by DEQ Opencut Section field staff. DEQ staff contacts DNRC if issues arise during operations and when site closure and reclamation is commenced. DNRC field staff visit all gravel permit areas prior to commencement of operations and during

reclamation. Some gravel operations are longer term, and DNRC site visits during operations are conducted on a periodic basis as needed.

Current Plans

Over recent years DNRC has implemented and improved upon a field well inspection application used on electronic tablets that aid field staff in digitally filling out, submitting, and tracking oil and gas well inspections as part of the continually developing risk-based inspection program for oil and gas operations on state trust lands. This application has been successful in providing a framework for more efficient and effective site inspections by DNRC staff. Between fiscal years 2023 and 2024, field staff have filled out 419 field inspection forms for oil and gas wells. All DNRC oil and gas wells are inspected and are on a regular inspection cycle. Currently these digital inspection forms can be viewed by DNRC managers or field staff to recall a specific inspection for any of the inspected wells. Given the success of the oil and gas inspection application, the Minerals Management Bureau, MMB, has incorporated additional GIS mapping tools to indicate which wells are to be inspected each year and record those that have already been inspected, along with the inspection reports.

The MMB continues to use drones as an effective method of inspecting and quantifying state gravel pits. Drones continue to help save the MMB a lot of time performing gravel pit inspections, allowing for more inspections to be completed while also providing very accurate volume measurements.

Forestry Assistance Bureau

The division's forest practices regulatory program provides information, education, and technical assistance, while promoting compliance with applicable laws meant to protect Montana's water quality, reduce fire risk, and promote sustainable forest management and stewardship on state and private lands.

The DNRC administers two laws related to forest practices, the Streamside Management Zone Law & Rules (SMZs) and the Control of Timber Slash and Debris Law & Rules. The DNRC also oversees the voluntary Montana Forestry Best Management Practices (BMP) program. These regulations and monitoring activities are intended to reduce wildfire hazards, protect riparian areas, and minimize non-point source water pollution from forest practices.

Regulated and Monitored Programs

Control of Timber Slash and Debris Law (76-13-401-415, MCA)

Requires a Hazard Reduction Agreement (HRA) to be in place to ensure the slash

generated from any commercial timber harvest operation is treated to minimize the wildland fire hazard. Landowners, loggers, and/or other forest operators are subject to this law, under which they must enter into a Hazard Reduction Agreement with DNRC and pay a performance bond, to be held by the DNRC until a certificate of clearance is issued, confirming the hazard is abated.

Streamside Management Zone Law (77-5-301-307, MCA)

Streamside Management Zone Law (SMZ) protects streams and adjacent lands during timber harvest activities. The SMZ law establishes buffers along streams where activity is regulated, yet limited timber harvesting is permitted.

Forestry Best Management Practices (76-13-101(2) & 76-13-420-424, MCA)

This is a non-regulatory program that utilizes education and monitoring to minimize soil and water effects from timber harvest and associated forest management operations. This program provides operators and landowners practical guidelines and technical assistance to protect soil and water resources while they conduct forest management operations.

Promoting Compliance, Education and Technical Assistance

SMZ and Best Management Practices (BMP) Field Reviews

The DNRC coordinates biennial field reviews to evaluate how well the SMZ Law and BMPs are being implemented and how effectively they are protecting soil and water resources. The results also represent the effectiveness of DNRCs educational efforts. The 2022 field reviews were at a compliance level of 96 percent for effectively implementing BMPs and 98 percent for effectively implementing the SMZ Law and Rules. This is an extremely high level demonstrating that protection of resources is important to everyone in the industry. The next cycle of reviews will be conducted in the spring/summer of 2024.

Workshops and Training

Every year, the DNRC partners with the Montana Logging Association (MLA) to train logging professionals, forest landowners and others about BMPs and SMZs. Attendance continues to be excellent, and completion of this class is a requirement to maintain Accredited Logging Professional (ALP) status.

BMP/SMZ	2019	2020	2021	2022	2023
# Workshops	4	4	6	4	4
# Participants	160	79	176	131	123

Alternative Practices:

The SMZ Law allows for activities that are prohibited by the SMZ law but meet the intent of the law. Requests for alternative practices ("Alternative" to management standards stated in 77-5-303(1) MCA), are given site visits, technical review, and MEPA review. If a request is granted, the alternative practice contains required mitigation measures and appropriate sideboards to protect the SMZ and the stream.

	2019	2020	2021	2022	2023
Alternative Practices Approved	12	15	17	16	5

Compliance

Control of Slash and Debris Law

The regulated community under the Control of Slash and Debris Law includes anyone clearing rights of way, cutting forest products, building forest roads, and/or carrying out timber stand improvement activities on private lands. Purchasers of forest products are also part of the regulated community in that they must ensure the entities from which they are purchasing forest products have a Hazard Reduction Agreement and are complying with hazard reduction regulations.

Active Fire Hazard Reduction Agreements

	FY19	FY20	FY21	FY22	FY23
Active HRAs on July 1 of FY	1656	1567	1565	1702	1530
New HRAs opened during Fiscal Year	503	512	566	356	312
HRAs closed during Fiscal Year (slash abated)	592	529	433	530	550

Mill Reporting

	FY19	FY20	FY21	FY22	FY23
# of Mills Reporting	47	48	46	45	45

BMPs

Forestry BMP compliance is monitored every 2 years by conducting field reviews on randomly selected timber sale sites across federal lands, state lands, and industrial and non-industrial private lands. Forest practices are rated for the application and effectiveness of BMPs. Results over the last five cycles show consistently high compliance scores. No monitoring was completed in 2020. Field reviews will be conducted again in the spring/summer of 2024.

Comparison of BMP Audit Results

Category	2012	2014	2016	2018	2020	2022
Application	98%	97%	98%	97%	n/a	96%
Effectiveness	98%	98%	99%	99%	n/a	98%

SMZs

Non-compliance is enforced with either a warning or a repair order (penalty), depending on the severity of the violation. Since the law's adoption, the number of SMZ violations/warnings has averaged well under 1 percent for all logging operations covered by an HRA agreement.

Number of SMZ Violations

	FY2019	FY2020	FY2021	Fy2022	Fy2023
Warning	8	1	2	1	4
Orders	2	2	2	1	0

Non-Compliance

HRA

The measure of hazard reduction non-compliance is the number of agreements that revert to the department due to the failure of the responsible party to comply with the terms of the HRA.

	FY19	FY20	FY21	FY22	FY23
HRA Reversions	11	5	3	2	1

Board of Oil and Gas Conservation

Compliance Assistance and Education Activities

The Board of Oil and Gas Conservation (Board) is composed of seven members appointed by the Governor for four-year terms to act and enforce the Board's oil and gas conservation statutes (Title 82, Chapter 11, MCA) and has rule-making authority (Title 36, Chapter 22, ARM). The Board is attached to the Department of Natural Resources and Conservation (DNRC) for administrative purposes.

The Division is made up of 19.5 FTE. Eight of these FTEs are directly involved with inspection and enforcement activities including a chief field inspector, 6 field inspectors, and a technical program coordinator.

Field inspectors perform routine visits to well sites to confirm compliance, provide information and advice to operators and landowners about regulatory requirements, investigate complaints, witness mechanical integrity tests and the plugging of wells, and supervise the plugging and abandonment of orphan wells.

Field staff conducted over 8,000 field inspections during FY22-23, including approximately 5,000 random inspections. The goal of inspections is to attain and maintain compliance with the rules and requirements. This is achieved by communicating with the operator what actions are necessary to prevent or correct violations. All violations and compliance issues not resolved under established schedules are addressed by the Board through show-cause hearings. There are several attempts to resolve the matter prior to the matter being taken to the Board and docketed as a "Show-Cause" hearing.

Regulated Community

The program regulates approximately 380 oil, gas, injection, and domestic gas well operators or owners in Montana who operate approximately 12,800 wells, including 4,900 gas wells, 6,400 oil wells, 207 gas storage wells, and 1,238 injection wells.

The oil and gas division estimates that 95% of the regulated community is in compliance with Board rules.

Noncompliance

Compliance issues are commonly identified through field inspections but can also be discovered through office compliance reviews and concerns expressed by land or mineral owners.

Most non-compliance issues in the field are resolved there. If not, the violation is referred to the compliance officer who makes further attempts to achieve compliance by contacting operator representatives and setting final deadlines. When all other attempts have been deemed unsuccessful, the matter is referred to the Board and docketed as a “Show-Cause” hearing. The following table is an overview of the number of field inspections conducted and the number of violations during FY2022 and FY2023.

Table 1:

Year	Number of Field Inspections	Violations	Percent of Non-Compliance
2022	4,253	93	7%
2023	3,956	73	5%
Total	8,209	166	6%

Through the reported period, weeds, site housekeeping, and signage represent approximately 76 percent of the recorded violations. Other violations include spills or releases, and improper production or injection equipment or facilities.

Compliance issues originating in the office primarily involve reporting deficiencies. The Board has authorized the application of administrative penalties for delinquent reporting, and if the violations remain unresolved at the administrative level, a show-cause hearing is scheduled.

The Board may issue civil penalties up to a maximum administrative penalty of \$125,000 (Sections 82-11-147 and 82-11-149, MCA). Penalties are automatically applied only in the case of delinquent reporting. All other penalties are established through the hearing process and can be either a fine for the violation or a daily fine that accrues until compliance is achieved. The Board is the final authority for enforcement actions, and orders issued by the Board may be appealed to District Court.

Enforcement Efforts

Any compliance issue that is the subject of a show-cause docket may result in multiple hearings and orders to meet either Board or statutory requirements. An operator's overall compliance may also be monitored once the initial issue is resolved by continuing the docket to future hearings. The following table is an overview of compliance issues brought before the Board and number of cases that were closed or are ongoing.

Table 2:

Compliance Issue	Number of Cases	Closed	Ongoing
Reporting violation	43	43	0
Inactive well review	12	11	1
Reclamation / "Housekeeping"	9	8	1
Mechanical integrity	2	2	0
UIC annual fee	2	2	0
Plugging liability update	3	2	1
Required report / missing data	1	1	0
Total	72	69	3

The main compliance violation during this period is reporting. A monthly injection or production report must be filed on all unplugged wells. Of the 87 violation notices mailed to operators regarding delinquent reporting, 43 resulted in Board referral.

Of the 166 field violations listed in Table 1, 125 were closed and 41 are ongoing. 11 cases originating from field inspections were referred to the Board. Many actions, including well abandonment or reclamation activities, are dependent upon the time of

year (weather), crop schedules, seasonal use restrictions, or contractor availability. As a result, incident or violation resolution may take more than one year to achieve.

During FY22-23, \$90,665 in penalties were collected. Of these fines, \$63,000 was collected from one operator with a civil penalty of \$125,000 and \$27,665 was collected primarily for delinquent monthly reports, reclamation / “housekeeping” violations, and penalties for failure to appear at a show cause hearing. Any penalties collected go to the general fund.

Trend Information

The retirement of two field inspectors and the division’s need to direct a large amount of field inspector time to witnessing the plugging of orphan wells due to the federal orphan well plugging grant contributed to a general decrease in routine and total inspections over the past two fiscal years. Another continued significant trend has been the loss of industry services within the state. Lack of drilling and workover rigs and a shortage of workers impacts exploration and production activities and increases the time necessary to achieve compliance.

The lack of services has also had an impact on the Board’s plugging and reclamation projects with a reduced number of companies responding to bid requests and increased costs for mobilization as services come from a greater distance.