



**TO: Chairman Gunderson and Walsh
EQC Members, WPIC Members**

FROM: Amanda Kaster, Director

DATE: September 13, 2024 | September 24, 2024

RE: DNRC's Legislative Concepts for 2025 Legislative Session

The following is a list of the Department of Natural Resources and Conservation's (DNRC) proposed agency bill concepts that have been approved through the Executive Planning Process for introduction in the 2025 Legislative Session. The Department would appreciate your review of these proposals.

Your decision to approve these concepts is not an endorsement of the proposal nor are these concepts considered Interim Committee bills— rather, it allows DNRC to arrange for these bills to be pre-introduced ahead of session. It is critical to note that DNRC is having its agency legal counsel draft these bills to ensure Legislative Council has capacity to work on your bills.

Forestry and Trust Lands Division

1. Title: Cash Lease Only Bidding for Agriculture Leases

Issue:

Currently, all competitive bidding on vacant and renewing agricultural leases is conducted on a crop share basis or a situation where the rental rate is guaranteed by a cash bid per acre if the crop share is above 33 percent, whichever is higher for the given production year. This is a confusing process for both the lessee and the staff who ensures that the proper rates are being charged annually.

Examples:

- For example, if a successful bidder has a 33 percent crop share guaranteed by a \$25 per acre cash bid and their production for that year yielded \$60 per acre, which would result in a state share of \$20 per acre on a crop share basis, the lessee would then be required to pay the greater of the two, which would be the \$25 per acre cash bid.
- A second example, on a lease that is bid 34 percent crop share with a per acre guarantee of \$50 per acre cash bid and the yield for spring wheat was 5,247 bushels, the two options would be:
 - Crop share: 5,247 bushels x \$8.91/bushel x 34 percent crop share = \$15,895.26

- Cash bid: 486.3-acre x \$50/acre = \$24,315

In this example, the cash bid value is the higher of the two.

In addition to this process being confusing, crop share bidding also exposes the department and the trust beneficiaries to risk because revenue is solely dependent on the portion of the lease that produces crop for that year. If half of a lease is in fallow, no revenue is generated off those acres. Revenue on a crop share is known to fluctuate based off market prices, natural factors such as hail, drought, or crop failure, and farming practices of the particular lessee.

Other factors that make crop share bidding undesirable is the fact that an agricultural producer is unable to insure the State's share of the crop, exposing the trust to revenue loss. Lenders are less willing to finance an operation on a crop share for the same reasons listed above. Agricultural producers have a harder time budgeting annual expense on a crop share lease due to variability of the cost of the lease and revenue.

Proposal:

In an effort to provide increased consistency for our trust beneficiaries, our lessees, and our staff, the Forestry and Trust Lands Division (FTLD) Agriculture and Grazing Management Bureau (AGMB) proposes to move away from competitive bidding of agricultural leases on a crop share basis in preference of a cash bid per acre method.

This would allow for more consistent revenues for the Trust, a simpler and less confusing bidding and billing process for lessees and staff, and the ability for our producers to more comfortably budget their operations because their input costs are fixed.

2. Title: Add Geologic Sequestration of Greenhouse Gasses to Under Ground Storage of Natural Gas Authorization

Issue:

Statute does not clearly provide a means for the Department or Land Board to authorize geologic sequestration of greenhouse gasses.

Proposal:

The Forestry and Trust Lands Division's Minerals Management Bureau proposes changes that would amend existing statutory language authorizing the underground storage of natural gas on state lands to include the authorization of DNRC to lease the geologic pore space for the sole purpose of permanently sequestering greenhouse gasses underground. Current statute only allows for the storage of natural gas by a public utility who is in the business of transporting or distributing natural gas by means of pipelines into, within, or through Montana for public use.

This statute does not fit the model for permanent CO2 sequestration. The Department proposes modifying 77-3 Part 5, MCA, to allow for a company who is not a public utility to permanently store CO2. Nationwide, there are more and more proposals coming to states managing Trust Lands to monetize pore space through CO2 storage. Making this a clear authority in statute removes potential legal uncertainty in the event litigation would ever be brought against the DNRC on this topic.

3. Title: Land Sales & Commercial-Residential Leases

Issue:

Currently state trust land can be sold through the land banking program or leased through the commercial leasing program.

Proposal:

The Forestry and Trust Lands Division's Real Estate Management Bureau is proposing is to enable the state to offer a new type of commercial development lease on trust lands which could allow the state to facilitate residential development and capture increased property values when lots are sold. A commercial development lease-sale program could enable a commercial lessee to improve, subdivide, and sell land without taking title to the land. The state retains the title, and the lessee provides the infrastructure, capital, and expertise to develop the land. The trust is compensated with an annual lease payment during development and then receives a percentage of the gross selling price at the time a lot is sold to a third party.

Given the passage and implementation of HB 819 last session, the DNRC believes this proposal would create an additional avenue for residential development opportunities on trust lands.

4. Title: Define Public Purpose for Easements

Issue:

Current statute does not contain a clear definition to grant easements for public purposes.

Proposal:

The Forestry and Trust Lands Division's Real Estate Management Bureau proposes to tie public uses to the definition in 70-30-102, MCA, in addition to the specific uses that are already identified in the statute. DNRC is proposing to remove a general reference to "other public uses" to eliminate ambiguity.

5. Title: Prescribed Fire Training and Liability

Issue:

Current liability standards and lack of available training limits the use of effective and widespread prescribed fire on private lands in Montana.

Proposal: To address collaboratively identified barriers, the Forestry and Trust Lands Division's Fire Protection Bureau seeks to establish a new liability standard contingent upon completion of a DNRC developed and administered training and tracking program.

6. Title: Hazard Reduction Agreement Small Project Exemption

Issue:

On forest management projects where commercial products are sold, landowners are required to obtain a Hazard Reduction Agreement (HRA) to ensure resulting logging slash does not create a fire hazard. On small projects, this results in an administrative burden for the department and landowner, as the projects are typically small enough that a fire hazard is not significant. This often results in viable wood products not being utilized, or noncompliance. For small projects we would like to create an exemption that allows the landowner to sell commercial wood products or firewood without an HRA. This will reduce administrative burden on landowners, contractors and staff, and increase wood utilization.

Proposal:

The DNRC proposes to create an exemption from the required Hazard Reduction Agreement for small projects (less than 5,000 feet of sawlogs or equivalent) that result in the sale of commercial wood products or firewood. This will reduce administrative burden on staff and create efficiency for private landowners and contractors.

8. Title: Wildfire Assessment Fee Cap Increase

Issue:

The DNRC funds 1/3 of its fire protection program from assessments on forested landowners, and in exchange provides wildland fire protection. The program periodically raises the rate to keep pace with operating costs, legislatively approved appropriations, and inflation. Currently, the assessment cap is maxed, leaving the department unable to raise additional assessments to fund wildfire preparedness resulting in a shortfall in funding for the statewide fire protection program. The cap needs to be raised to ensure financial solvency of the program.

Proposal:

The DNRC proposes to amend 76-13-201, MCA, to increase the landowner assessment cap from \$50.00 up to \$58.70 as well as the acre assessment fee from \$0.30 to \$0.62. The department does not plan to increase assessments to the maximum cap. It will only increase as needed to keep pace with program funding

needs and anticipates this cap increase will protect the program for the next 8 to 10 years.

Conservation and Resource Development Division

1. Title: Transfer the Montana Sage Grouse Oversight Team to DNRC

Issue:

Currently, the Montana Sage Grouse Oversight Team (MSGOT) is administratively attached to the Governor's Office. The staff for MSGOT are DNRC employees and the program is generally viewed as a DNRC Program. This creates confusion with stakeholders and complicates matters like rulemaking. The rules associated with The Sage Grouse Habitat Conservation Act are under the Office of the Governor, not DNRC. Further, allowing agency directors to provide a designee will allow for greater engagement in MSGOT.

Proposal:

The DNRC's proposal is to move the MSGOT as an administrative attachment from the Office of the Governor to DNRC. The proposal will also make the legislative members of MSGOT advisory in nature. The proposal will also allow Agency Directors' to assign their agency representation to another staff within their agency, making it easier to schedule meetings and achieve quorum.

2. Title: Align Procurement Limits with Federal and State Limits

Issue:

Conservation Districts (CDs) have different procurement limits than the state and federal procurement systems. When CDs receive federal or state grants, the federal and state procurement limits prevail, creating confusion and audit findings when CDs apply their procurement limits for work using federal or state funds.

Proposal: The Conservation District Bureau is proposing to align CD procurement limits with federal and state limits.

Water Resources Division (*Bills Approved for Pre-Introduction by WPIC on September 13, 2024*)

1. Title: HB 114 Cleanup

Issue:

HB 114, which streamlined the water rights permit and change process, was passed during the 2023 session. Errors and omissions became apparent through implementation and need to be cleaned up.

Proposal:

DNRC's Water Resources Division is proposing minor amendments to 85-2-307, MCA. The amendments are in line with the original intent of HB 114, and only clarify or fix typographical errors. Proposed amendments include:

- Clarifying the timeline for DNRC completion of a draft decision document is relative to whether a preapplication meeting occurred, as the applicant can choose to complete their own technical analyses whether or not they have a preapplication meeting.
- Clarifying the timeline for DNRC consideration of public comments is 30 days after the close of the public comment period, as it would be impossible for DNRC to consider public comments that are not yet received.
- Fixing a typographical error.

2. Title: Exempt Wastewater Pond Dams in Dam Safety Act**Issue:**

Wastewater pond dams are subject to regulation under the Department of Environmental Quality. In the past, wastewater pond dams were also required to perform a hazard classification in accordance with 85-15-209, MCA, and 36.14.201, ARM. DNRC recognized the need to eliminate redundant and possible conflicting regulation of wastewater pond dams between the agencies, so a wastewater pond exemption was included into 36.14.201, ARM. The DNRC was later advised that administrative rules cannot be used for exemptions. In response, DNRC is proposing to include the wastewater pond hazard classification exemption in 85-15-107, MCA.

Proposal:

The DNRC Water Resource Division and the Montana Dam Safety program are proposing to add the following to 85-15-107, MCA, to provide an exemption for wastewater ponds regulated by DEQ.

The provisions of **85-15-108** through **85-15-110**, **85-15-209** through **85-15-216**, **85-15-401**, **85-15-502**, and **85-15-503** do not apply to wastewater pond dams that are subject to regulation under the Department of Environmental Quality (DEQ) and will be constructed according to DEQ regulations.

3. Title: Board of Water Well Contractors – Changes to Board of Water Well Contractor's language in MCA 37-43-301, 37-43-302, 37-43-306, and 37-43-309.**Issue:**

Current state law, 37-43-301, MCA, requires the licensed water well contractor to do all contracting. The term "contracts" is not defined in this part, and could be interpreted to include solicitation, negotiation, or other administrative tasks that a licensee's employees might conduct. Larger companies that employ contractors or drillers may use unlicensed managers or executives to negotiate or sign contracts

that include well construction. Removing this provision removes a potential impediment to businesses that employ contractors or drillers.

37-43-302, MCA, clarifies license requirements for anyone modifying or working on wells, it doesn't however call out abandoning or decommissioning wells. The Board of Water Well Contractors office receives calls wanting clarification on who can abandon or decommission wells.

37-43-306, MCA, designates the current bonding amount required for water well contractor's licensure. It is not sufficient to cover the cost of repairing or replacing a well or to abandon a well.

37-43-309, MCA, regarding complaints and investigations, requiring licensees be given an opportunity to respond to complaints and demonstrate or achieve legal compliance prior to disciplinary action. This provision has not served to encourage resolution of issues arising between licensees and complainants. In circumstances in which a complainant has been so aggrieved they no longer wish to permit a licensee to access the well, the Board cannot proceed with discipline because the licensee cannot be provided with an opportunity to demonstrate or achieve legal compliance prior to disciplinary action. In practice, this provision has been used only to provide licensees facing potential discipline an opportunity to avoid discipline.

Proposal:

For 37-43-301, MCA, the Board of Water Well Contractors is proposing to remove the requirement that the licensed water well contractor must be the individual who contracts on behalf of the firm, corporation, or partnership to remove a potential impediment to businesses that employ contractors or drillers.

For 37-43-302, MCA the Board of Water Well Contractors is proposing to add "abandon, decommission" to clarify law. Abandoning or decommissioning wells is an activity the Board believes should be conducted by licensees. This clarification is consistent with 37-43-101, MCA (Purpose), and 37-43-202(3), MCA (Powers and Duties).

For 37-43-306, MCA, the Board of Water Well Contractors is proposing to increase the bond requirements in statute from \$4,000 to \$25,000 to better cover all costs necessary for repairing or replacing a well or to abandon a well.

For 37-43-309, MCA, the Board of Water Well Contractors is proposing to remove language requiring licensees be given an opportunity to respond to complaints and demonstrate or achieve legal compliance prior to disciplinary action.