



**TO: Chairman Walsh  
WPIC Members**

**FROM: Amanda Kaster, Director**

**DATE: September 13, 2024**

**RE: DNRC's Agency Bill Concepts for 2025 Legislative Session**

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

## **Water Resources Division**

### 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 MCA 85-15-209 and ARM 36.14.201. 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 ARM 36.14.201. 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 MCA 85-15-107.

### **Proposal:**

The DNRC Water Resource Division and the Montana Dam Safety program are proposing to add the following to MCA 85-15-107 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:**

MCA 37-43-301 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.

MCA 37-43-302 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.

MCA 37-43-306 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.

MCA 37-43-309 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 MCA 37-43-301, the DNRC Water Resource Division and the Board of Water Well Contractors are 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 MCA 37-43-302, the DNRC Water Resources Division and the Board of Water Well Contractors are 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 MCA 37-43-101 (Purpose) and MCA 37-43-202(3) (Powers and Duties).

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

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