



**MONTANA
ADMINISTRATIVE
REGISTER**



DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

NOTICE OF PROPOSED RULEMAKING

MAR NOTICE NO. 2025-157.1

Summary

Amendment of ARM 36.12.101, 36.12.102, 36.12.103, 36.12.115, 36.12.117, and 36.12.1305 and Adoption of NEW RULES 1 through 7 pertaining to water right permitting

Hearing Date and Time

Thursday, July 31, 2025, at 9:00 a.m.

Hearing Information

A public hearing will be held at the Department of Natural Resources and Conservation Building, Montana Conference Room, first floor, located at 1539 Eleventh Avenue, Helena, Montana.

Virtual Hearing Information

Interested parties may access the remote conferencing platform in the following ways:

Join Zoom Meeting:

1) <https://mt-gov.zoom.us/j/88918282728?pwd=6ObYj9TfYRUmjacfrhUSbHUZ5zHpT.1>;
Meeting ID: 889 1828 2728; Password: 286016; or

2) Dial by Telephone: +1 646 558 8656; Meeting ID: 889 1828 2728; Password: 286016

Find your local number: <https://mt-gov.zoom.us/j/k78A8c5pk>

Comments

Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the contact information listed below. Comments must be received by Friday, August 8, 2025, at 5:00 p.m.

Accommodations

The agency will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. Requests must be made by Monday, July 21, 2025, at 5:00 p.m.

Contact

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Montana Relay 711

Rulemaking Actions

AMEND

The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

36.12.101 DEFINITIONS

In addition to definitions provided for in 85-2-102, MCA, and unless the context requires otherwise, to aid in the implementation of the Montana Water Use Act and as used in these rules:

- (1) through (3) remain the same.
- (4) "Applicant" means the "person~~;~~"; as defined in 85-2-102, MCA, who files a permit or change application with the department.
- (5) "Application" for purposes of ARM 36.12.120 through 36.12.122, 36.12.1301, 36.12.1401, 36.12.1501, and 36.12.1601 means an application for beneficial water use permit, Form No. 600, or an application to change a water right, Form No. 606.

- (a) For the purposes of ARM 36.12.117 "application" means an application filed under 85-2-302, 85-2-316, 85-2-402, 85-2-407, ~~and~~ 85-2-408, MCA, and [HB 432 (2025)].
- (6) "Aquifer" means a geologic structure or unit that contains saturated and permeable material capable of yielding water in usable quantities.
- (7) "Aquifer system" means a series of hydraulically connected aquifers whose horizontal and vertical extents could be limited by formation contacts, faults, surface water bodies, and less permeable materials.
- (6) through (45) remain the same but are renumbered (8) through (47).
- ~~(46)~~(48) "Pit," "pit-dam," or "pond" means a body of water that is created by man-made means, which stores water for beneficial use.
- (47) and (48) remain the same but are renumbered (49) and (50).
- ~~(49)~~(51) "Possessory interest" means the right to possess, use, or exert some interest or form of control over specific land. It is the legal right to possess or use property by virtue of an interest created in the property, though it need not be accompanied by fee title, such as the right of a tenant, easement holder, or lessee.
- (50) through (52) remain the same but are renumbered (52) through (54).
- (55) "Project completion notice" means a notice by the appropriator on a form provided by the department that the project works are completed, and water is being appropriated in substantial accordance with the terms of the permit authorization, including any reduction or modification of the permit pursuant to 85-2-313, MCA, or change authorization.
- (53) through (60) remain the same but are renumbered (56) through (63).
- ~~(61)~~(64) "Source aquifer" means an aquifer or aquifer system the specific groundwater source from which water is diverted for a beneficial use.
- (62) through (65) remain the same but are renumbered (65) through (68).
- (69) "Substantial accordance" means that an appropriation has been completed in compliance with the terms of a permit authorization, including any reduction or modification pursuant to 85-2-313, MCA, or change authorization. Substantial accordance may allow for minor deviation from those terms if the department determines the deviation will not cause injury to other appropriators or otherwise does not require a change authorization.
- (66) through (73) remain the same but are renumbered (70) through (77).
- (78) "Verification" or "verify" means the process used by the department to determine whether completion of an appropriation of water and a project completion notice are in substantial accordance with the terms, conditions, restrictions, and

limitations of the permit authorization, including any reduction or modification pursuant to 85-2-313, MCA, or change authorization.

(74) through (80) remain the same but are renumbered (79) through (85).

Authorizing statute(s): 2-4-201, 85-2-113, 85-2-308, 85-2-370, MCA

Implementing statute(s): 85-2-113, 85-2-301 through 85-2-319, 85-2-321 through 85-2-323, 85-2-329 through 85-2-331, 85-2-335 through 85-2-338, 85-2-340 through 85-2-344, 85-2-351, 85-2-360, 85-2-361, 85-2-362, 85-2-364, 85-2-368, 85-2-370, 85-2-401, 85-2-402, 85-2-407, 85-2-408, 85-2-410 through 85-2-413, 85-2-418, MCA

Reasonable Necessity Statement

This rule is being amended to add definitions. The addition of “project completion notice,” “substantial accordance,” and “verification” definitions is associated with implementation of HB 441 from the 2025 legislative session. The definitions of “aquifer” and “aquifer system” are being added to provide clarity in how the department evaluates source aquifers for the purposes of water right applications.

36.12.102 FORMS

- (1) The following necessary forms for implementation of the act and these rules are available from the Department of Natural Resources and Conservation, P.O. Box 201601, Helena, Montana 59620-1601 and its Water Resources regional offices, or on the department's website. The department may revise as necessary the following forms to improve the administration of these rules and the applicable water laws:
 - (a) and (b) remain the same.
 - (c) Form No. 602, "Notice of Completion of Groundwater Development;" ~~which must be submitted for groundwater developments with a maximum use of 35 GPM or less, not to exceed ten acre-feet per year;~~
 - (d) Form No. 602E, "Request for Extension for Authorized Notice of Intent to Appropriate Groundwater," which must be submitted to request an extension under [HB 681 (2025)];
 - (e) Form No. 602I, "Notice of Intent to Appropriate Groundwater," which must be submitted to file a notice under [HB 681 (2025)];
 - (d) remains the same but is renumbered (f).

- ~~(e)~~(g) Form No. 605, "Application for Provisional Permit for Completed Stockwater Pit or Reservoir₁"; which must be submitted for a pit or reservoir with a maximum capacity of less than 15 acre-feet and a total appropriation of less than 30 acre-feet per year;
- (f) through (m) remain the same but are renumbered (h) through (o).
- ~~(n)~~(p) Form No. 625, "Correction to a Water Right ~~Correction~~";
- (o) through (r) remain the same but are renumbered (q) through (t).
- ~~(s)~~(u) Form No. 634, "Notice of Change in Appropriation Right for a Replacement Well ~~Notice~~," which ~~must be submitted for municipal wells that do not exceed 450 GPM, or for all other wells that do not exceed 35 GPM and ten acre feet per year;~~
- ~~(t)~~(v) Form No. 635, "Notice of Change in Appropriation Right for Redundant Water Supply Well Construction ~~Notice~~,"; which must be submitted for redundant wells in a public water supply system as defined by 75-6-102, MCA;
- (u) remains the same but is renumbered (w).
- ~~(v)~~(x) Form No. 637, "Reinstatement Request₁"; which must be submitted to reinstate a permit or change authorization;
- ~~(w)~~(y) Form No. 638, "Water Reservation Application for Instream Flow₁"; which must be submitted for instream flow water reservation applications allowed under the United States of America, Department of Agriculture, Forest Service-Montana Compact, Article VI, section B;
- ~~(x)~~ Form No. 639, "~~Waiver of Statutory Timelines~~";
- ~~(y)~~(z) Form No. 640, "Certification of Water Right Ownership Update₁"; which must be completed and submitted to the county clerk and recorder with a Realty Transfer Certificate when a water right is being divided or exempted (reserved) from the property;
- ~~(z)~~(aa) Form No. 641, "DNRC Ownership Update, Divided Interest₁"; which must be submitted for a water right that will be divided;
- (aa) and (bb) remain the same but are renumbered (bb) and (cc).
- ~~(ee)~~(dd) Form No. 644, "Notice of Change in Appropriation Right for a Replacement Point of Diversion₁"; which must be submitted for replacement of surface water points of diversion under ~~85-2-402(18), MCA [HB 432 (2025)]~~;
- (dd) and (ee) remain the same but are renumbered (ee) and (ff).
- ~~(ff)~~(gg) Form No. 647, "Notice of Completion of Emergency Fire Protection Development₁"; which must be submitted for groundwater developments by

local governmental fire agencies organized under Title 7, chapter 33, MCA, for emergency fire protection;

- (hh) Form No. 650, "Temporary Lease of Appropriation Right," which must be submitted to apply for a temporary lease under [SB 178 (2025)];
- (gg) through (ii) remain the same but are renumbered (ii) through (kk).
- ~~(jj)~~(ll) Form No. 654, "Public Comment on a Draft Preliminary Determination," which must be submitted for public comment under 85-2-307(4), MCA; and
- ~~(kk)~~(mm) Form No. 655, "Application Amendment Form," which must be submitted to modify an application under ARM 36.12.1401-;
- (nn) Form No. 656, "Notice of Change in Appropriation Right for Stock Tanks," which must be submitted for a notice filed under [HB 432 (2025)];
- (oo) Form No. 657, "Notice of Change in Appropriation Right for Municipal Use," which must be submitted for a notice filed under [HB 432 (2025)];
- (pp) Form No. 658, "Petition for Reduction, Modification, or Revocation of a Provisional Permit," which must be submitted for a petition filed under 85-2-313, MCA;
- (qq) Form No. 659, "Response to Petition for Reduction, Modification, or Revocation of a Provisional Permit," which must be submitted for a response filed under 85-2-313, MCA; and
- (rr) Form No. 670, "Waiver of Adverse Effect," which must be submitted for a waiver filed under [SB 190 (2025)].

Authorizing statute(s): 85-2-113, MCA

Implementing statute(s): 85-2-113, 85-2-302, 85-2-306, 85-2-307, 85-2-311, 85-2-316, 85-2-402, 85-2-424, 85-20-401, MCA; [SB 178 (2025), HB 432 (2025)]

Reasonable Necessity Statement

The amendments to this rule are associated with new forms established by legislation during the 2025 legislative session (SB 178, HB 432, HB 441, HB 681). The waiver of timelines form is being struck because waivers of timeline are not applicable to the permit/change process after the effective date of HB 114 (2023 legislative session).

36.12.103 FORM AND SPECIAL FEES

- (1) remains the same.
- (2) The department will assess the following filing fees:
 - (a) through (c) remain the same.
 - (d) \$500 for Form No. 600P, Permit Preapplication Meeting. This fee will be credited to the filing fee of Form No. 600 for preapplication meetings that meet the requirements of ARM 36.12.1302;
 - ~~(d)~~(e) \$250 for a Notice of Completion of Groundwater Development, Form No. 602, filed for groundwater developments with a maximum use of 35 GPM or less, not to exceed ten acre feet per year;
 - (f) \$250 for a Request for Extension for Authorized Notice of Intent to Appropriate Groundwater, Form No. 602E;
 - (g) \$400 for a Notice of Intent to Appropriate Groundwater, Form No. 602I;
 - (e) and (f) remain the same but are renumbered (h) and (i).
 - (j) \$500 for Form No. 606P, Change Preapplication Meeting. This fee will be credited to the filing fee of Form No. 606 for preapplication meetings that meet the requirements of ARM 36.12.1302;
 - ~~(g)~~(k) \$400 for an Application to Change a Water Right, Form No. 606, in the following instances:
 - (i) if the change application concerns a replacement well greater than 200 feet from the original well 35 GPM or ten acre feet, or a municipal well that exceeds 450 GPM, or replacement reservoir located on the same source; or
 - (ii) if the change application concerns only moving or adding stock tanks to an existing system;
 - (h) remains the same but is renumbered (l).
 - ~~(i)~~(m) \$100, plus \$20 for each water right transferred after the first water right, for a Water Right Ownership Update, Form No. 608. The total amount shall not exceed \$600. No fee is required for removing a deceased person from a record of ownership;
 - (j) through (m) remain the same but are renumbered (n) through (q).
 - ~~(n)~~(r) \$150 400 for a Notice of Change in Appropriation Right for a Replacement Well Notice, Form No. 634;

- ~~(e)~~(s) \$200 400 for a Notice of Change in Appropriation Right for Redundant Water Supply Well Construction Notice, Form No. 635;
- (p) through (t) remain the same but are renumbered (t) through (x).
- ~~(u)~~(y) \$400 for Form No. 644, Notice of Change in Appropriation Right for a Replacement Point of Diversion;
- (v) through (x) remain the same but are renumbered (z) through (bb).
- ~~(cc)~~ \$400 for Form No. 650, Temporary Lease of Appropriation Right;
- (y) and (z) remain the same but are renumbered (dd) and (ee).
- ~~(aa)~~ \$500 for Form No. 600P, Permit Preapplication Meeting. This fee will be credited to the filing fee of Form No. 600 for preapplication meetings that meet the requirements of ARM 36.12.1302; and
- ~~(bb)~~ \$500 for Form No. 606P, Change Preapplication Meeting. This fee will be credited to the filing fee of Form No. 606 for preapplication meetings that meet the requirements of ARM 36.12.1302.
- ~~(ff)~~ \$400 for Form No. 656, Notice of Change in Appropriation Right for Stock Tanks;
- ~~(gg)~~ \$400 for Form No. 657, Notice of Change in Appropriation Right for Municipal Use; and
- ~~(hh)~~ \$250 for Form No. 658, Petition for Reduction, Modification, or Revocation of a Provisional Permit.
- (3) There shall be no fees charged for filing the following forms:
 - (a) through (e) remain the same.
 - ~~(f)~~ Form No. 639, Waiver of Timelines;
 - (g) and (h) remain the same but are renumbered (f) and (g).
 - ~~(i)~~(h) Form No. 654, Public Comment on a Draft Preliminary Determination; and
 - ~~(j)~~(i) Form No. 655, Application Amendment Form; and
 - ~~(j)~~ Form No. 659, Response to Petition for Reduction, Modification, or Revocation of a Provisional Permit; and
 - ~~(k)~~ Form No. 670, Waiver of Adverse Effect.
- (4) remains the same.

Authorizing statute(s): 85-2-113, MCA

Implementing statute(s): 85-2-113, 85-2-302, 85-2-306, 85-2-307, 85-2-311, 85-2-312, 85-2-314, 85-2-402, 85-2-426, 85-2-436, 85-20-401, MCA; [SB 178 (2025), HB 432 (2025), HB 441 (2025), HB 681 (2025)]

Reasonable Necessity Statement

The amendments to this rule are associated with new forms established by legislation during the 2025 legislative session (HB 432, HB 681, SB 178, HB 441). Fees for each new exception (HB432) were set equal to the current exception fee in Form 644. The Notice of Intent to Appropriate Groundwater and the Request for Extension of Authorized Notice of Intent (HB 681) are new forms and new processes. The bill sponsor and finance and claims committee discussed funding for this bill and agreed that a fee increase should be the mechanism for funding the staff to complete the work within the statutory timelines set by the bill. Fees for these forms were set to provide the necessary revenue from the state special revenue fund based on average annual submittals under the exception to the permitting process in 85-2-306, MCA. The fees for remaining new forms were set based on the estimated time and expenses the department anticipates for processing the form (SB 178, HB 441). The pre-application form and fee are being moved in rule for improved ordering of the rule based on the form number.

36.12.115 WATER USE STANDARDS

- (1) remains the same.
- (2) The department will use the following standards when reviewing notices or applications for new uses of water:
 - (a) for domestic use, for one household, the standard shall be based on the residential wastewater treatment design flow rate standards used by the Montana Department of Environmental Quality, and calculated by the number of bedrooms served: ~~1.0 acre-foot per year of water for year-round use;~~
 - (i) 1 bedroom 150 gpd;
 - (ii) 2 bedrooms 225 gpd;
 - (iii) 3 bedrooms 300 gpd;
 - (iv) each additional bedroom add 50 gpd;
 - (b) remains the same.

- (c) for stockwater, a consumptive use of 15 gallons per day or .017 acre-foot per year per animal unit. Animal unit equivalencies for water consumption are set out in ARM 36.12.101 and the DNRC water calculation guide conversion table, Form No. 615;
- (d) through (6) remain the same.

Authorizing statute(s): 85-2-113, MCA

Implementing statute(s): 85-2-301 through 85-2-319, 85-2-321 through 85-2-323, 85-2-329 through 85-2-331, 85-2-335 through 85-2-338, 85-2-340 through 85-2-344, 85-2-350, 85-2-351, 85-2-401, 85-2-402, 85-2-407, 85-2-408, 85-2-410 through 85-2-413, 85-2-415 through 85-2-419, 85-2-436, 85-2-437, 85-2-439, 85-2-501 through 85-2-512, 85-2-601 through 85-2-606, 85-2-608, 85-2-804 through 85-2-806, MCA

Reasonable Necessity Statement

This rule is being amended to modifying domestic use standard to be more reasonable based on actual water use and consistent with Department of Environmental Quality standards commonly used.

36.12.117 OBJECTION TO APPLICATION

- (1) A person objecting to a proposed application under 85-2-308, MCA, [HB 432 (2025)], or [SB 178 (2025)], must file an objection to an application on Form No. 611, Objection to Application, which can be obtained from the department, and must comply with the requirements set forth in this rule.
- (2) through (5) remain the same.
- (6) An Objection to Application is timely if: ~~the postmark date on the form is on or before the objection deadline stated in the public notice of the application. A fax of the Objection to Application form will be accepted, provided the original Objection to Application form is postmarked or hand-delivered timely. Electronic mail (e-mail) submissions of the Objection to Application will not be accepted.~~
 - (a) for paper objection forms, the form is received by the office specified on the objection form on or before the objection deadline specified in the public notice of the application; or

- (b) for electronically submitted objection forms, the form is received on or before the objection deadline stated in the public notice of the application. If a form is submitted electronically, it must be submitted in the manner specified in the public notice.
- (7) An Objection to Application filed with the department ~~before an application has been~~ prior to the published objection period will not be accepted and will be returned.
- ~~(8)~~ Upon receipt of an Objection to Application or response to an Objection Deficiency Notice, the department will place the envelope postmark date on the form. If the postmark date is not legible, the department will assign the date as two days prior to the department's receipt of the objection form. An objector is solely responsible for ensuring timeliness, a legible postmark, and filing of the objections.
- ~~(9)~~(8) An Objection to Application is correct and complete if it includes the following legible information:
 - (a) through (e) remain the same.
 - (f) ~~facts indicating that~~ probable, believable facts sufficient to support a reasonable legal theory that the application does not meet one or more of the applicable criteria set forth in 85-2-302, 85-2-311, 85-2-316, 85-2-402, 85-2-407, ~~or 85-2-408, MCA, [HB 432 (2025)], or [SB 178 (2025)].~~ The facts ~~provided must specifically describe why or how one or more of the criteria are not met;~~
 - (g) through (i) remain the same.
- ~~(10)~~(9) An objection that is deemed correct and complete and valid pursuant to 85-2-308~~(3)~~(4) and ~~(6)~~(7), MCA, [HB 432 (2025)], or [SB 178 (2025)], may proceed to an administrative hearing. The administrative hearing will be limited to the criteria objected to in the objection. An objector may participate in the administrative hearing only on the criteria to which the objector specifically objected and which is determined valid by the department.
- ~~(11)~~(10) The department will ~~mail~~ send notice via the objector's preferred means of communication to the objector ~~of the Objection to Application~~ of any deficiencies in the objection. The objector must address the information requested in the Objection Deficiency Notice and ~~must have the response postmarked or hand delivered~~ must be received by ~~to~~ the department within 15 business days from the date on the Objection Deficiency Notice. ~~E-mail~~ Electronic submissions of a response will be accepted.
- (12) through (15) remain the same but are renumbered (11) through (14).

~~(16)~~(15) For objections to an application pursuant to 85-2-308, MCA, ~~An~~ an applicant is not required to meet a water quality criterion when a valid water quality objection is not raised or is withdrawn.

~~(17)~~(16) Private agreements between applicants and objectors which provide for the withdrawal of objections and include conditions that must be met by an applicant or objector may not be recognized by the department or included in a granted application. The department will only place a condition on ~~a granted~~ an authorized application if the department determines the condition is necessary to meet the application criteria or protect the rights of other appropriators.

Authorizing statute(s): 85-2-308, MCA; [HB 432 (2025), SB 178 (2025)]

Implementing statute(s): 85-2-308, MCA; [HB 432 (2025), SB 178 (2025)]

Reasonable Necessity Statement

HB 432 includes two authorization types that will be subject to a public notice period for objections. The department is required to adopt rules for these objections and is opting to re-use these existing rules to also apply to these authorization types in HB 432. SB 178 also allows for an objection process and the department is adopting the objection rules for this process to ensure consistency. The department is also proposing changes to its standards for how an objection form can be submitted to allow for electronic submittal of objection forms. The changes also clarify that forms need to be received by the close of the objection period. The United States Postal Service no longer reliably postmarks all mail, leading to a postmark date on mail as no longer a viable option. Electronic submissions are intended to allow an alternative to mailing objections through the postal service. Additional changes to what constitutes a correct and complete objection are being made to help objectors better understand what needs to be included in the objection for it to be considered correct and complete.

36.12.1305 FILING A CHANGE APPLICATION AND FORM ACCEPTANCE

(1) through (3) remain the same.

(4) For proposed water right changes with both temporary and permanent components, one application form may be submitted.

(4) through (7) remain the same but are renumbered (5) through (8).

~~(8) For a change application that only adds stock tanks to an existing stock water system:~~

- (a) ~~Form No. 606 and any applicable addendum(s) must be completed and must describe the details of the proposed project;~~
- (b) ~~the applicant must explain the extent of the historical use, including the flow rate and volume, for each water right proposed for change;~~
- (c) ~~the applicant must provide information to show that the historical diverted flow rate will be adequate for the new use; and~~
- (d) ~~for changes from instream stock rights based on 85-2-222, MCA, to stock tank(s), the maximum flow rate authorized for the new use will be 35 gallons per minute unless the applicant demonstrates a higher historical rate.~~

Authorizing statute(s): 85-2-113, 85-2-302, MCA

Implementing statute(s): 85-2-302, 85-2-402, MCA

Reasonable Necessity Statement

Upon the effective date of HB 432, changes that add stock tanks to an existing stock water system are exceptions from the full change application process, eliminating the need for (8). The addition of (4) clarifies and codifies current department policy to accept permanent and temporary change components on a single change application.

ADOPT

The rules proposed to be adopted are as follows:

NEW RULE 1 (36.12.124) PUBLIC COMMENT ON A DRAFT PRELIMINARY DETERMINATION

- (1) A person filing a public comment regarding a draft preliminary determination or an updated draft preliminary determination issued for a water right application under 85-2-307, MCA must file the comment on Form No. 654, Public Comment on a Draft Preliminary Determination, and must comply with the requirements set forth in this rule.
- (2) A separate public comment must be filed for each water right application.
- (3) Persons owning separate water rights must each file a separate Public Comment on Draft Preliminary Determination form.

- (4) Co-owners (owners of a water right that is not split between the owners) of an undivided water right may file one Public Comment on Draft Preliminary Determination form.
- (5) A Public Comment on Draft Preliminary Determination form is timely if:
 - (a) for paper comment forms, the form is received by the office specified in the public notice of the application on or before the deadline specified in the public notice of the application; or
 - (b) for electronically submitted forms, the form is received on or before the public comment deadline stated in the public notice of the application. If a form is submitted electronically, it must be submitted in the manner specified in the public notice.
- (6) A public comment filed with the department before public notice of an application has been published will not be accepted.
- (7) A public comment must be received within the time allowed by the Notice of Opportunity to Provide Public Comment and include the following information:
 - (a) complete contact information and signature of the commenter or commenter's representative;
 - (b) the application number and applicant name for which the public comment is submitted;
 - (c) a statement of the commenter's standing, including an explanation of how the commenter's property, water rights, or interests would be adversely affected by the proposed application. If a commenter is claiming that their water right will be adversely affected if the application were to be granted, the commenter must provide the department-assigned water right number affected and explain why they believe their right will be adversely affected;
 - (d) identification of one or more criteria that is not adequately addressed in the draft preliminary determination;
 - (e) for each criterion identified in (d), an explanation of how the draft preliminary determination does not adequately address that criterion.
- (8) The department will not consider public comments that:
 - (a) are not on Form No. 654;
 - (b) do not include the information required by (7); or
 - (c) are not received by the deadline in the Notice of Opportunity to Provide Public Comment.
- (9) The department's preliminary determination will consider and respond to public comments filed in compliance with (7). As part of the response to public

comments, the department may update technical analyses pursuant to ARM 36.12.1303 by issuing an errata but will not issue a new Technical Analyses Report.

Authorizing statute(s): 85-2-307, MCA

Implementing statute(s): 85-2-307, MCA

Reasonable Necessity Statement

The department is proposing to adopt rules on public comments to an application. The rules provide clarity on how a Public Comment on a Draft Preliminary Determination form can be submitted, what is required to be included in the public comment, and how the department will respond to public comments.

NEW RULE 2 (36.12.810) PROJECT COMPLETION NOTICE

- (1) For an appropriation completed after the effective date of this rule, the appropriator must file a correct and complete project completion notice with the department on or before the deadline specified in the permit authorization, including any order to reduce or modify the permit pursuant to 85-2-313, MCA, change authorization, or any written extension of time. A correct and complete project completion notice must be on a form provided by the department.
- (2) If a water right has multiple change authorizations issued within the same project completion period, the appropriator may file a single project completion notice for all the authorized changes and the department will verify them at the same time.
- (3) A correct and complete project completion notice for a permit must include:
 - (a) information about all completed elements of the permit;
 - (b) a certified statement in compliance with 85-2-315, MCA;
 - (c) a description explaining compliance or deviation from terms, conditions, or restrictions;
 - (d) if a permit authorization is reduced or modified following the final decree pursuant to 85-2-313, MCA, a description explaining compliance with the order reducing or modifying the permit;
 - (e) for a permit authorized for a purpose of sale of water or water marketing, records of the maximum annual use of water and copies of all executed contracts for the sale of all water; and

- (f) other information deemed necessary by the department.
- (4) A correct and complete project completion notice for a change authorization must include:
 - (a) information about the completed element(s) of the water right authorized for change;
 - (b) a certified statement in compliance with 85-2-402, MCA;
 - (c) a description explaining compliance or deviation from terms, conditions, or restrictions;
 - (d) for a change authorized for a purpose of sale of water or water marketing, records of the maximum annual use of water and copies of all executed contracts for the sale of all water; and
 - (e) other information deemed necessary by the department.
- (5) For a project completion notice filed with the department prior to the effective date of this rule, the department will consider the information required by (3) for a permit or (4) for a change to determine whether the project completion notice includes adequate information.
- (6) If the department determines a project completion notice is not correct and complete or does not include adequate information, it shall notify the appropriator of any defects and identify the type of information required to be submitted in response.
- (7) The appropriator may provide information in response to the notice of defects within 45 days, unless the written notice provides for a different deadline. If the appropriator does not provide the requested information within the time provided, the department will verify whether the appropriation was completed in substantial accordance with the permit or change authorization based on the information contained in the project completion notice and other records and evidence available to the department.
- (8) The department may inspect the completed appropriation any time after a project completion notice is filed.
- (9) If a project completion notice for a permit was verified prior to the effective date of this rule, and the permit is reduced or modified following final decree pursuant to 85-2-313, MCA, the appropriator is required to file a subsequent project completion notice. Such a subsequent project completion notice is subject to the applicable sections of this rule.

Authorizing statute(s): 85-2-113, 85-2-402, MCA

Implementing statute(s): 85-2-310, 85-2-311, 85-2-312, 85-2-313, 85-2-314, 85-2-315, 85-2-402, MCA

Reasonable Necessity Statement

HB 441 from the 2025 legislative session clarifies considerations for verification of a permit or change authorization and issuance of a certificate of water right. NEW RULE 2 is necessary to define the requirements for a project completion notice, which must be filed prior to the department's verification of a permit or change authorization.

NEW RULE 3 (36.12.811) PERMIT VERIFICATION

- (1) The department will conduct a comparative analysis of the information provided in the project completion notice and the permit authorization, including any reduction or modification of the permit pursuant to 85-2-313, MCA, to verify whether the appropriation was completed in substantial accordance with the permit authorization and any reduction or modification. The department will review all relevant information within its possession.
- (2) The department will use the water use standards applied at the time the permit was authorized to determine if the elements of the completed appropriation are in substantial accordance with the authorization.
- (3) Corrections to legal land descriptions due to improved mapping of township, range, section, and 1/4 section may be considered in substantial accordance with the point of diversion and place of use element(s) of the water right.
- (4) The department will evaluate whether the following information identified in the project completion notice is in substantial accordance with the permit authorization, including any reduction or modification of the permit pursuant to 85-2-313, MCA:
 - (a) the source of supply;
 - (b) the flow rate, which may not exceed the authorized amount;
 - (c) the total diverted volume, which may not exceed the authorized amount;
 - (d) the period of diversion, which may not exceed the authorized period;
 - (e) the period of use, which may not exceed the authorized period;
 - (f) the point of diversion, which may not be completed outside the legal land description authorized;

- (g) the place of use, which may not be completed outside the legal land description authorized;
 - (h) the purpose of use matches the authorized purpose of use;
 - (i) if applicable, the place of storage, including:
 - (i) the storage capacity, which may not exceed the authorized amount;
 - (ii) the surface area, which may not exceed the authorized amount; and
 - (iii) the place of storage location, which may not be completed outside the legal land description authorized;
 - (j) if applicable, the consumptive volume, which may not exceed the volume authorized; and
 - (k) if applicable, the description explaining compliance or deviation from terms, conditions, or restrictions.
- (5) The department shall document its findings of substantial accordance on a verification abstract.

Authorizing statute(s): 85-2-113, MCA

Implementing statute(s): 85-2-310, 85-2-311, 85-2-312, 85-2-313, 85-2-314, 85-2-315, MCA

Reasonable Necessity Statement

HB 441 from the 2025 legislative session clarifies considerations for verification of a permit and issuance of a certificate of water right. NEW RULE 3 is necessary to define how the department will evaluate substantial accordance with the terms, conditions, restrictions, and limitations of the permit authorization for a completed appropriation.

NEW RULE 4 (36.12.812) CHANGE VERIFICATION

- (1) The department will conduct a comparative analysis of the information provided in the project completion notice and the change authorization to verify whether the appropriation was completed in substantial accordance with the change authorization. The department will not evaluate any elements of the water right not authorized for change. The department will review all relevant information within its possession.

- (2) The department will use the water use standards applied at the time the change was authorized to determine if the elements of the completed appropriation are in substantial accordance with the authorization.
- (3) Corrections to legal land descriptions due to improved mapping of township, range, section, and 1/4 section may be considered in substantial accordance with the point of diversion and place of use element(s) of the water right.
- (4) The department will evaluate whether the following information identified in the project completion notice is in substantial accordance with the change authorization:
 - (a) for a change in point of diversion, the flow rate, which may not exceed the authorized amount, and the point of diversion, which may not be completed outside the legal land description authorized;
 - (b) for a change in place of use, the place of use, which may not be completed outside the legal land description authorized;
 - (c) for a change in the purpose of use, the completed purpose of use, and the consumptive use volume, which may not exceed the historical consumptive use volume of the water right;
 - (i) for a change in purpose to water marketing, the volume of the water marketing purpose will be limited to the maximum annual use proven by the appropriator;
 - (d) for a change in place of storage or addition of storage, the completed place of storage, which includes:
 - (i) the storage capacity, which may not exceed the authorized amount;
 - (ii) the surface area, which may not exceed the authorized amount;
 - (iii) the consumptive use volume, which may not exceed the authorized amount;
 - (iv) the place of storage location, which may not be completed outside the legal land description authorized; and
 - (e) for any type of authorized change, if applicable, the description explaining compliance or deviation from terms, conditions, or restrictions.
- (5) The department shall document its findings of substantial accordance on a verification abstract.

Authorizing statute(s): 85-2-113, 85-2-402, MCA

Implementing statute(s): 85-2-312, 85-2-314, 85-2-315, 85-2-402, MCA

Reasonable Necessity Statement

HB 441 from the 2025 legislative session modified the considerations for verification of a completed change authorization. NEW RULE 4 is necessary to define how the department will evaluate substantial accordance with the terms, conditions, restrictions, and limitations of the change authorization for a completed change.

NEW RULE 5 (36.12.813) VERIFICATION DECISION

- (1) If, after final decree in the respective administrative basin, the department determines that an appropriation was completed in substantial accordance with a permit authorization, including any reduction or modification of the permit pursuant to 85-2-313, MCA, or change authorization, it shall issue a certificate of water right.
- (2) If the department determines that an appropriation was not completed in substantial accordance with a permit authorization, including any reduction or modification of the permit pursuant to 85-2-313, MCA, or change authorization, the department shall send the completed verification abstract to the appropriator. The verification abstract shall include a statement of the department's proposed action.
- (3) Within 30 days of issuance of the verification abstract, the appropriator may:
 - (a) provide the department with a written plan to comply in substantial accordance with the authorization; or
 - (b) file a written request for a show cause hearing in accordance with 85-2-314, MCA, to show why the authorization should not be revoked or modified.
- (4) If the department does not receive notice of the appropriator's decision in (3) within 30 days of issuance of the verification abstract, the department will proceed with the proposed action in (2).
 - (a) If the proposed action is to modify the permit or change, the department will complete the modification and issue a certificate of water right.
 - (b) If the proposed action is to revoke the permit or change, the department will complete the action, and no certificate of water right will be issued.
- (5) If the appropriator submits a plan pursuant to (3)(a), the department shall issue a written decision approving or denying the plan within 30 days.

- (a) Written approval of a plan may suspend action on verification of the permit or change authorization for up to two years and must include a deadline for the appropriator to submit written certification that the plan achieved compliance with the authorization within the time provided for by the department, along with any other requirements deemed necessary by the department.
 - (b) If the department denies the plan or determines that the certification pursuant to (5)(a) does not establish the appropriation was completed in substantial accordance with the authorization, the appropriator may request a show cause hearing in accordance with 85-2-314, MCA, to show why the authorization should not be revoked or modified within 30 days of the department's denial or determination.
- (6) If the appropriator does not request a show cause hearing pursuant to (3)(b) or (5)(b), the department will proceed with its recommendation to revoke or modify the authorization.
 - (a) If the proposed action is to modify the permit or change, the department will complete the modification and issue a certificate of water right.
 - (b) If the proposed action is to revoke the permit or change, the department will complete the action, and no certificate of water right will be issued.
- (7) If an owner of record finds an error in the department verification of a permit or change authorization, they may provide written notice of the error and what correction is needed on a form provided by the department. The department may evaluate the notice and correct the error.

Authorizing statute(s): 85-2-113, 85-2-402, MCA

Implementing statute(s): 85-2-313, 85-2-314, 85-2-315, 85-2-402, MCA

Reasonable Necessity Statement

HB 441 from the 2025 legislative session modified the considerations for verification of a completed change authorization. NEW RULE 5 details how the department will proceed with its verification findings and includes due process for a water user if the department determines their appropriation was not completed in substantial accordance. NEW RULE 5 also provides that the department can correct errors on a verified permit or change authorization.

NEW RULE 6 (36.12.814) HEARING AND FINAL ACTION

- (1) If a show cause hearing is requested pursuant to NEW RULE 5, it is the appropriator's burden to demonstrate by a preponderance of the evidence why the authorization should not be revoked or modified as provided in the verification abstract recommending revocation or modification of the permit or change.
- (2) A show cause hearing under this rule shall be conducted pursuant to the procedural rules in ARM Title 36, chapter 12, subchapter 2.
- (3) Following the show cause hearing, the hearing examiner may adopt the department's recommendation in the verification abstract, modify the verified abstract, or remand to the department with instructions. The department's records must be updated according to the final order issued by the hearing examiner.

Authorizing statute(s): 85-2-113, 85-2-402, MCA

Implementing statute(s): 85-2-314, 85-2-315, 85-2-402, MCA

Reasonable Necessity Statement

HB 441 from the 2025 legislative session modified the considerations for verification of a completed change authorization. NEW RULE 4 builds on NEW RULE 5 to explain the hearings process that would occur as part of the due process for a water user if the department determines their appropriation was not completed in substantial accordance.

NEW RULE 7 (36.12.2102) TEMPORARY LEASE OF A WATER RIGHT

- (1) An appropriator proposing to temporarily lease a water right pursuant to [SB 178 (2025)], must file an application with the department. An application may be filed only by the owner of record of the water right proposed for lease.
- (2) The applicant must provide evidence that the water right has been used within the five years prior to the date an application is filed. Evidence of use under this section includes, but is not limited to the following:
 - (a) dated photographs or aerial imagery demonstrating use of water;
 - (b) notarized affidavit(s);
 - (c) power bills, if the conveyance system includes a pump;
 - (d) water use measurement records; or

- (e) crop production records.
- (3) If the department previously identified the historical consumptive use of the water right proposed for lease as part of an earlier change authorization, the department may reuse that calculation when reviewing an application for a temporary lease. If the historical consumptive use of the water right proposed for lease has not been calculated by the department through a previous change application, the department will use the following standards for estimating consumptive use of the water right when reviewing an application for a temporary lease:
 - (a) the consumptive volume for irrigation is the lesser of:
 - (i) crop consumptive use as calculated using the methodology from ARM 36.12.1902(14) through (16)(f); or
 - (ii) 2.0 acre-feet per acre irrigated;
 - (b) the consumptive volume for domestic or multiple domestic use is 10% of the assigned volume for the respective purpose;
 - (c) the consumptive volume for lawn and garden, shrubbery, and shelterbelts is 1.75 acre-feet per acre per year based on 70 percent of 2.5 acre-feet per acre per year;
 - (d) the consumptive volume for stockwater is 15 gallons per day or 0.017 acre-foot per year per animal unit based on ARM 36.12.115. Animal unit equivalencies for water consumption are set out in ARM 36.12.101 and the DNRC water calculation guide;
 - (e) if a place of storage is being discontinued for the duration of the temporary lease, the consumptive use from evaporative losses as calculated based on ARM 36.12.116; and
 - (f) other consumptive uses not covered in this section must be evaluated, calculated, and justified by the applicant. The evaluation must include an explanation of how the water is beneficially used for the purpose and how any wastewater or waste disposal occurs.
- (4) An application must include a statement of potential adverse effects and description of the planned actions the applicant will take which demonstrate no adverse effect on other water rights.
 - (a) The applicant's statement must explain what potential adverse effect could occur from the change in use under the temporary lease and how they made that determination.
 - (b) The applicant's description of planned actions must document the effects to other water rights including the following:
 - (i) the effect to water rights using the same point of diversion;

- (ii) the effect that discontinued use of all or a portion of the leased water right will have on other water users; and
 - (iii) the effects of any changes to the historic diversion pattern including rate and timing.
- (5) If storage is being temporarily added, the applicant must identify the capacity of the storage facility and how the capacity was calculated.
- (6) At minimum, the department will identify and provide written notice to all owners of record of water rights that according to the records of the department may be affected by the proposed lease of water.

Authorizing statute(s): 85-2-113, MCA

Implementing statute(s): [SB 178 (2025)]

Reasonable Necessity Statement

SB 178 from the 2025 legislative session created a new process allowing a temporary lease of a water right. NEW RULE 7 is necessary to establish the information necessary to meet the application requirements and what the department will look at when evaluating a temporary lease application.

Fiscal Impact

Pursuant to 2-4-302(1)(c), MCA, based on 2025 application statistics, the department estimates the monetary impact from the increase in fees set forth in the proposed amendments to ARM 36.12.103 as follows:

Subsection	Cumulative annual amount	Persons affected annually
36.12.103(2)(f)	\$221,625	886
36.12.103(2)(g)	\$1,182,000	2955
36.12.103(2)(m)	\$-23,400	234*
36.12.103(2)(r)	\$8,800	44
36.12.103(2)(s)	\$1,000	5
36.12.103(2)(cc)	\$14,400	36
36.12.103(2)(ff)	\$0	**
36.12.103(2)(gg)	\$2,000	5***
36.12.103(2)(hh)	\$15,000	60****

*The cumulative annual amount is negative because the rule change reduces the number of ownership update filings DNRC will receive by approximately 2% per year.

**The fee for adding/moving stock tanks is not changing. The process is just changing for these to be allowed as an exception to the full change application process.

***This is a new process and it is unknown how many municipalities may qualify for this exception. DNRC is estimating that 5 applications per year will be submitted.

****This is a new process. For fiscal impact, DNRC estimates that the filing of petitions will be at a similar occurrence as the filing of objections to a permit (5% filing rate).

Small Business Impact

The department has determined that the class or group of businesses that will be affected by this proposed rulemaking are those businesses which need a water right for their business operations. The department does not believe the proposed rulemaking will have a significant and direct impact on small businesses. Many businesses that need water will obtain that water through a public system. In those cases, the small business does not actually need to obtain a water right as the water right is held by the owner of the public system. The department has completed a small business impact analysis, which is available upon request.

Bill Sponsor Notification

The bill sponsor contact requirements apply and have been fulfilled. Two primary bill sponsors (HB 441 and SB 178) were contacted by e-mail and by USPS first class mail on May 13, 2025. Two additional primary bill sponsors (HB 432 and HB 681) were contacted by e-mail on May 19, 2025.

Interested Persons

The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail and/or mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Written requests may be mailed or delivered to the contact person or may be made by completing a request form at any rules hearing held by the department.

Rule Reviewer

Brian Bramblett

Approval

Amanda Kaster, Director