

310 Mini Trainings

Determining Jurisdiction



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What we'll cover

- Land ownership & applicant type
- Review of what a “project” is
- Is it a perennial stream?
- How far from the stream?

What is a Project?

- "Project" means a physical alteration or modification that results in a change in the state of a natural, perennial-flowing stream or river, its bed, or its immediate banks.
- "Immediate banks" means the area above the mean high water mark and directly adjacent to the stream, which when physically altered or modified has the potential to affect the state of a stream.

Landownership & Applicant

- MCA 75-7-103
 - “Applicant” means any person presenting notice of a project to the supervisors.
 - “Person” means any individual, corporation, firm, partnership, association, or other legal entity not covered under 87-5-502.
- 124 Permits are for: “An agency of state government, county, municipality, or other subdivision of the state of Montana”
- 310 Permits are for any private entity conducting a project on a perennial flowing stream within the boundary of a conservation district

Is the Stream Covered by the 310 Law?

Look to the *Adopted Rules*

In order for a stream to be covered under the Act, it must:

(a) be a natural waterway.

(i) Natural rivers or streams that have been rechanneled for road construction, flood control, irrigation, or other public works are considered natural waterways.

(ii) Natural rivers or streams that are used as part of an irrigation deliver system as allowed under 85-2-411, MCA, are considered a natural waterway, but only if those natural streams had perennial flow prior to diverting water through them.

(iii) Artificial or man-made waterways that have been constructed for the purposes of conveying water for any purpose are not considered a natural waterway.

(iv) Flood channels, high water channels, and side channels of natural, perennial-flowing streams are considered part of a stream if water naturally enters the channels during high water or normal flow.

Is the Stream Covered by the 310 Law?

Look to the Adopted Rules Cont.

(a) contain continuous natural flows.

- (i) Water diverted into a natural channel for the withdrawal or diversion downstream shall not be considered part of the natural flow of a stream;
- (ii) Water feeding a natural channel from any ground water source, tributary, springs, or other natural source, shall be considered part of the natural flow.
- (iii) Water stored in a reservoir that maintains or raises the flow of a stream shall be considered natural flow.
- (iv) Streams that dry up because of diversion, impoundments, appropriation, or extreme drought shall be considered to have continuous natural flows.

Resources to Use

- (a) USGS maps;
- (b) Water Resource Surveys;
- (c) Water rights records;
- (d) Landowner and resident interviews;
- (e) Hydrology reports;

Opportunity for Technical Review!!!

- (a) On-site evaluations to gather information on geomorphology, vegetation, insects; past human activity;
- (b) Historical information;
- (c) Aerial photos;
- (d) Stream flow data; or
- (e) Any other relevant information.

Example 1

Culvert replacement at Whitefish Mountain Resort on Forest Service lands.

Example 2

Project is located on dry streambed

Example 3

Project is located on a ditch

Example 4

Project is located 100' from the stream

Summary

- The 310 Law applies to private land *and* public land when the applicant is a private party
- The 310 Law applies to streams that are both a natural waterway and have continuous natural flows, including side channels and historic channels
- The CD may use a variety of resources to help determine if the law applies to a particular stream
- There is no set distance from the stream. Rather, the 310 Law applies to any area which when physically altered has the potential to impact the stream.