

310 Law Mini Trainings: What is a Project?

Determining if an action is considered a “project” under the 310 law requires considering definitions found in the Montana Code Annotated (MCA), the Administrative Rules of Montana (ARM), and the Adopted Rules (AR) of the Conservation District.

- “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. ([MCA 75-5-103](#))
- “Physical alteration or modification” means human-caused actions resulting in the placement, removal, or disturbance of materials of any nature or character. ([AR](#))
- “Natural Perennial-flowing stream” means a stream, which in the absence of diversion, impoundment, appropriation, or extreme drought, flows continuously at all seasons of the year and during dry as well as wet years. ([ARM 36.2.402](#))
- “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 the stream. ([ARM 36.2.402](#))
- “Mean high water mark” means the line that water impresses on the land for sufficient periods to cause physical characteristics that distinguish the area below the line for above it. Characteristics of the area below the line include, when appropriate, deprivation of the soil of substantially all terrestrial vegetation and destruction of its agricultural value. ([ARM 36.2.402](#))

Taken all together, an action is considered a “project” under the 310 Law if it results in a human-caused disturbance that has the potential to impact a perennially-flowing stream. The only exceptions to this include activity that falls within a CD approved plan of operation, maintenance of irrigation facilities that does not significantly alter the stream (as determined by the CD), and livestock grazing. ([MCA 75-5-103](#))

Frequently Asked Questions:

Q: The activity will have only positive impacts to the stream. Is it considered a project?

A: Yes. The law does not differentiate between positive and negative impacts. Even if the potential impacts to a stream are beneficial, it is still considered a “project” and must be permitted in accordance with the 310 Law.

Q: If an activity is above the mean high water mark is it a project?

A: Yes. In addition to the bed and banks of a stream, the 310 Law also applies to the area above the mean high water mark, which when physically altered has the potential to impact the stream, known as the “immediate banks”. If the activity is within

this area then it is considered a “project” and must be permitted in accordance with the 310 Law.

Q: If an activity is taking place next to a perennially-flowing stream, but it won’t impact the stream, is it a project?

A: No. To be considered a “project” the activity must result in a change in the state of a natural, perennial-flowing stream or river, its bed, or its immediate banks. Examples of activities that might be considered not a project include walking along the stream bank, seeding native grasses, minimal pruning of vegetation, et cetera. But keep in mind, it is up to the conservation district to determine if the proposed activity will or will not impact the stream.