

BEFORE THE DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of adoption of New ) NOTICE OF PUBLIC HEARING ON  
Rules I through V, amendment, and ) PROPOSED ADOPTION,  
repeal pertaining to ARM 36.12 Water ) AMENDMENT, AND  
Rights Bureau ) REPEAL

TO: All Concerned Persons

1. On October 26, 2023, at 11:00 a.m., the Department of Natural Resources and Conservation (DNRC) will hold a public hearing at the DNRC in the Montana Conference Room, First Floor, located at 1539 Eleventh Avenue, Helena, Montana, and via Zoom, to consider the proposed adoption, amendment, and repeal of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

- a. Join Zoom Meeting: <https://mt.gov.zoom.us/j/86561424874?pwd=L1pjZEExak9Hb2NLL1BZMVRnRU9oUT09>; Meeting ID: 865 6142 4874; Password: 706435; or
- b. Dial by Telephone: +1 646 558 8656; Meeting ID: 865 6142 4874; Password: 706435; Find your local number: <https://mt.gov.zoom.us/u/kBhL8acl>

2. The department 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. If you require an accommodation, contact the department no later than 5:00 p.m. on October 20, 2023, to advise us of the nature of the accommodation that you need. Please contact Jamie Price, Department of Natural Resources and Conservation, 1539 Eleventh Avenue, PO Box 201601, Helena, MT 59620-1601, 406-444-6615, or e-mail DNRCOAH@mt.gov.

3. The rules as proposed to be adopted provides as follows:

NEW RULE I VARIANCE REQUESTS

(1) An applicant may make a written request for a variance from the requirements of subchapter 36.12.121 or 36.12.1702 to the appropriate regional office on a form provided by the department. The variance request must be:

(a) post-marked or sent electronically to the department by the deadline established at the preapplication meeting; or

(b) if a preapplication meeting is not held, the applicant may include a request for variance with a filed application, or as part of a deficiency response pursuant to 36.12.1501.

(c) a variance request that is not submitted within the timeframe identified in (a) or (b) shall be denied.

(2) The department shall grant or deny the variance within 30 business days of receipt of the written request. The department's grant of a variance request may impose conditions necessary to ensure the application materials and data provided is sufficient to evaluate the applicable criteria.

AUTH: 85-2-113, MCA

IMP: 85-2-302, 85-2-311, 85-2-330, 85-2-336, 85-2-341, 85-2-343, 85-2-344, 85-2-360, 85-2-361, 85-2-362, 85-2-402, 85-2-506, 85-2-508, MCA

REASON: Creating one location for addressing variance requests instead of including in multiple locations in rule.

#### NEW RULE II PREAPPLICATION MEETING

(1) If the applicant completes a preapplication meeting with the department, the department will provide for a discounted application filing fee provided for in 36.12.103 and expedited timelines provided for in 36.12.1501.

(2) A written request for a preapplication meeting must identify the following elements of the proposed permit or change in appropriation:

(a) the flow rate and volume of water required;

(b) the point of diversion;

(c) the place of use;

(d) the source of water;

(e) the purpose;

(f) for changes, the water rights proposed to be changed;

(g) for changes, an explanation of historical use of the right(s) proposed for change; and

(h) any proposed places of storage, if applicable.

(3) A preapplication meeting must be documented by a department provided checklist that identifies:

(a) all necessary technical analyses and whether the analyses will be completed by the applicant or the department,

(b) applicable aquifer testing requirements, measurement requirements, variances to be requested, or planned mitigation,

(c) any information to be provided by the applicant necessary for the department to complete the technical analyses requested under subsection (3)(a).

(4) The department will set the 45-day department deadline for completion of the technical analyses upon receipt of the \$500 preapplication fee, receipt of the information provided for in (3)(c), and signed checklist. These items must be received within 180 days of the preapplication meeting.

(5) An applicant does not qualify for a discounted filing fee provided for in 36.12.103 and expedited timelines provided for in 36.12.1501 if:

(a) upon submittal of the application to the department, the applicant has changed any element of the proposed application documented on the preapplication checklist; or

(b) the applicant requests additional analyses from the department not documented on the preapplication checklist; or

(c) the application is not filed within 180 days of the department's completion of technical analyses.

(6) The preapplication meeting procedure for a combined permit and change application documented on the preapplication checklist, will be conducted as follows:

(a) The applicant will be required to complete two preapplication meetings pursuant to (1) through (3) to receive a full discount of the application fees. Each preapplication meeting will require the fee set forth in 36.12.103.

(b) A preapplication meeting for the permit will be conducted first. The technical analyses completed for the permit application will identify information necessary to consider for the change application.

(c) A preapplication meeting for the change will be conducted once the applicant has gathered the information needed under (2).

(d) The combined permit and change application must be filed with the department within 180 days from the date of completion of the technical analyses for the change application. The 180-day timeframe will apply to both the permit and change application and will not start until completion of the technical analyses for the change application.

(7) Any technical analyses completed by the department expire one year from the technical analysis completion date.

AUTH: 85-2-302, MCA

IMP: 85-2-302, 85-2-311, 85-2-330, 85-2-336, 85-2-341, 85-2-343, 85-2-344, 85-2-360, 85-2-361, 85-2-362, 85-2-402, 85-2-506, 85-2-508, MCA

REASON: Proposing to delete the permit and change application acceptance rules because the important elements are being incorporated into either 36.12.1304: Filing a Permit Application and Form Acceptance or 36.12.1305: Filing a Change Application and Form Acceptance. HB 114 modified the timelines and process for application review and specifically introduced the increased reliance upon and importance of the preapplication.

### NEW RULE III TECHNICAL ANALYSES

(1) Technical analyses may be required for permit and change applications to provide the minimum information necessary for the department to complete a criteria assessment under 85-2-311, MCA for permits, or 85-2-402, MCA for changes. The department will conduct technical analyses necessary to evaluate criteria if not provided by the applicant. The applicant maintains the burden to meet the criteria.

(2) A department provided checklist will identify the technical analyses for each application type:

- (a) Surface water permits;
- (b) Surface water change applications;
- (c) groundwater permits in an open basin;
- (d) groundwater change applications;
- (e) groundwater permits in a closed basin.

(3) Applicable technical analyses must be completed prior to an application being deemed correct and complete.

(4) The department will evaluate technical analyses completed by the applicant for scientific credibility.

AUTH: 85-2-113, MCA

IMP: 85-2-302, 85-2-311, 85-2-330, 85-2-336, 85-2-341, 85-2-343, 85-2-344, 85-2-360, 85-2-361, 85-2-362, 85-2-402, 85-2-506, 85-2-508, MCA

REASON: HB114 modified the timelines and process for application review and specifically introduced the Technical Analyses as a result of the preapplication meeting. This new rule identifies the different application types that may require a technical analysis and establishes the department's role in completion and evaluation of technical analyses.

NEW RULE IV FILING A PERMIT APPLICATION AND FORM ACCEPTANCE

(1) A permit application (Form No. 600) must be filed when an applicant desires to use surface water or groundwater that does not meet an exception to permit requirements under 85.2.306, MCA.

(2) The department will not accept a permit application and will not assign a priority date if any of the following items are missing:

(a) the flow rate and volume of water,

(b) the point of diversion,

(c) the place of use,

(d) the source of water,

(e) the purpose,

(f) the applicant's signature,

(g) for a groundwater well, aquifer testing results conforming to ARM 36.12.121,

(h) for projects proposed in sage grouse habitats designated as a core area, general habitat, or a connectivity area, a letter from the Montana Sage Grouse Habitat Conservation Program stating the project is consistent with Executive Orders 12-2015 and 21-2015; and

(i) the appropriate filing fee in 36.12.103.

(3) Separate applications are required for:

(a) each source of supply; or

(b) different purposes or places of use supplied by different points of diversion on the same source. If the entire project is manifold into one system, then a single application is allowed.

(4) One application is allowed for:

(a) one purpose and multiple points of diversion on the same source; and

(b) for several purposes, if all the points of diversion supply all of the same purposes.

(5) The time needed to complete construction and put the water to beneficial use must be identified. Information must be included in the application materials that justify the requested time.

AUTH: 85-2-113, 85-2-302, MCA

IMP: 85-2-302, 85-2-310, MCA

REASON: Combining application receipt rules (36.12.1301) and Filing a Permit Application rules (36.12.1701) into one set of rules and renumbering as 36.12.1304 for improved flow of rules to follow the application process. 1301 and 1701 will be repealed from the rules as part of the combined rule that has been renumbered. General flow of rule has been changed to explain when a permit is needed, application receipt, and when it is acceptable to file one application for a complex project.

NEW RULE V FILING A CHANGE APPLICATION AND FORM  
ACCEPTANCE

(1) An applicant who desires to change the point of diversion, place of use, purpose of use, or place of storage of a water right must file an application to change a water right (Form No. 606) and any applicable addendums.

(2) The department will not accept a change application if any of the following items are missing:

(a) the water right element(s) proposed for change,

(b) the water right number for each water right changed,

(c) the proposed diverted flow rate and diverted volume of water for each changed right,

(d) the applicant's signature,

(e) for projects proposed in sage grouse habitats designated as a core area, general habitat, or a connectivity area, a letter from the Montana Sage Grouse Habitat Conservation Program stating the project is consistent with Executive Orders 12-2015 and 21-2015; and

(f) the appropriate filing fee in 36.12.103.

(3) An application for a temporary change must meet the same rule requirements as those for a permanent change application.

(4) In addition to the change application rules, an applicant proposing to temporarily change to instream flow must submit the information required under 85-2-407 and 85-2-408, or 85-2-436, MCA.

(5) The department must consider historical use in determining whether changing the water right would constitute an enlargement in historical use of the original water right.

(6) Only an owner of record, as shown in the department's water right records, can apply to change a water right, except if a change application is for a water right lease pursuant to 85-2-436, MCA, the change applicant must be the State of Montana, Department of Fish, Wildlife, and Parks.

(a) for water rights that are co-owned, all owners shall sign the application form consenting to the change.

(7) Multiple water rights may be changed on one application if the place of use, purpose, and storage information will be exactly the same for each water right.

(8) The time needed to complete and put the change into operation must be identified. Information must be included in the application materials that justify the requested time.

(9) 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.

AUTH: 85-2-113, 85-2-302, MCA

IMP: 85-2-302, 85-2-402, MCA

REASON: Combining application receipt rules (36.12.1301) and Filing a Change Application rules (36.12.1901) into one set of rules and renumbering as 36.12.1305 for improved flow of rules to follow the application process. 1301 and 1901 will be repealed from the rules as part of the combined rule that has been renumbered. General flow of rule has been changed to explain when a change is needed, application receipt, and important considerations for change applications.

4. The rules as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

#### 36.12.101 DEFINITIONS

In addition to definition provided for in 82-2-102, MCA, and ~~Unless~~ unless the context requires otherwise, to aid in the implementation of the Montana Water Use Act and as used in these rules:

(1) remains the same.

(2) "Amount" refers to both a flow rate in gallons per minute (~~gpm~~ GPM), or cubic feet per second (~~efs~~ CFS), and a volume of water in acre-feet (~~af~~ AF).

(3) through (8) remain the same.

(9) "CFSfs" means a flow rate of water in cubic feet per second and is equivalent to 448.8 gallons per minute. Applications for a flow rate of less than one CFS ~~efs~~ will be converted to gallons per minute.

(10) through (16) remain the same.

~~(17) "Criteria addendum" means that additional portion of an application on which substantial credible information must address the criteria listed in 85-2-311 and 85-2-402, MCA.~~

(18) and (19) remain the same but are renumbered (17) and (18).

~~(20) "Department" means the Montana Department of Natural Resources and Conservation (DNR).~~

(21) through (24) remain the same but are renumbered (19) through (22).

~~(25) "Existing right", in addition to its definition in 85-2-102, MCA, includes any appropriation of water commenced prior to July 1, 1973, if completed according to the law as it existed when the appropriation was begun.~~

(26) remains the same but is renumbered (23).

~~(24) (27)~~ "Flow rate" is a measurement of the rate at which water flows or is diverted, impounded, or withdrawn from the source of supply for beneficial use, and commonly measured in cubic feet per second (CFS cfs) or gallons per minute (GPM gpm).

(28) remains the same but is renumbered (25).

~~(26) (29)~~ "GPM gpm" means a flow rate of water in gallons per minute.

(30) through (34) remain the same but are renumbered (27) through (31).

~~(32) (35)~~ "Means of diversion" means the type of structures, facilities, or methods used to appropriate, impound, or collect water. ~~Examples include, but are not limited to the following:~~

- ~~(a) dike;~~
- ~~(b) dam;~~
- ~~(c) ditch;~~
- ~~(d) headgate;~~
- ~~(e) infiltration gallery;~~
- ~~(f) pipeline;~~
- ~~(g) pump;~~
- ~~(h) pit; or~~
- ~~(i) well.~~

(36) remains the same but is renumbered (33).

~~(34) (37)~~ "Multiple domestic use" means a domestic use by more than one household or dwelling characterized by long-term occupancy as opposed to guests. ~~Examples are domestic uses by:~~

- ~~(a) colonies;~~
- ~~(b) condominiums;~~
- ~~(c) townhouses; and~~
- ~~(d) subdivisions.~~

(38) through (46) remain the same but are renumbered (35) through (43).

~~(47)~~ "Permit" means a permit to appropriate water issued by the department under Title 85, chapter 2, part 3, MCA.

~~(48)~~ "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency thereof, or any other entity (~~see 85-2-102, MCA~~).

(49) through (54) remain the same but are renumbered (44) through (49).

~~(55)~~ "Pre-application review" means the applicant or the applicant's attorney or consultant or others who may know about the proposed project have met with the department in person, via teleconference, or via video conference to discuss details of the proposed project and application.

(56) through (58) remain the same but are renumbered (50) through (52).

~~(59)~~ "Project" means a place of use that has its own identifiable flow rate, volume, and means of diversion.

(60) through (72) remain the same but are renumbered (53) through (65).

(66) "Supplemental rights" means separate water rights for the same purpose, owned by the same water user, and used on overlapping places of use.

(73) through (75) remain the same but are renumbered (67) through (69).

~~(76) "Temporary permit" means a permit to appropriate water granted pursuant to Title 85, chapter 2, part 3, MCA, for a specific period of time and with an automatic expiration date.~~

(77) through (80) remain the same but are renumbered (70) through (73).

~~(74) (81) "Volume" means the acre-feet of water per year. Twelve acre-inches or 325,851 gallons are equal to one acre-foot.~~

(82) through (85) remain the same but are renumbered (75) through (78).

~~(79) "Water Rights Information System" means the state's official centralized record system of all water rights maintained in an electronic database.~~

(86) and (87) remain the same but are renumbered (80) and (81).

AUTH: 2-4-201, 85-2-113, 85-2-308, 85-2-370, MCA

IMP: 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, ~~85-2-350~~, 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

REASON: Removing terms already defined in statute, removing examples from definitions, and updating or adding other definitions based on rule change package.

### 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 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) Form No. 600P, "Permit Preapplication Meeting";

~~(b) (a) Form No. 600, "Application for Beneficial Water Use Permit", which must be submitted for groundwater developments in excess of 35 GPM gpm or ten acre feet per year and surface water appropriations when an applicant desires to use surface water or groundwater that does not meet an exception to permit requirements under 85-2-306, MCA;~~

~~(c) (b) Form No. 602, "Notice of Completion of Groundwater Development", which must be submitted for groundwater developments with a maximum use of 35 GPM gpm or less, not to exceed ten acre-feet per year;~~

(c) and (d) remain the same but are renumbered (d) and (e).

(f) Form No. 606P, "Change Preapplication Meeting";

(e) through (i) remain the same but are renumbered (g) through (k).

(l) (j) Form No. 615, "DNRC Standards and Water Conversion Table";

(k) through (q) remain the same but are renumbered (m) through (s).

~~(t) (r) Form No. 634, "Replacement Well Notice", which must be submitted for municipal wells that do not exceed 450 GPM gpm, or for all other wells that do not exceed 35 GPM gpm and ten acre-feet per year;~~

(s) remains the same but is renumbered (u).



(v) (t) Form No. 636, "Interim Permit Request"; "Petition to Subordinate a State Water Reservation";

(u) through (y) remain the same but are renumbered (w) through (aa).

(ab) (z) Form No. 642, "DNRC Ownership Update, Exempt (Reserved) Split or Split and Sever of a Water Right";

(ac) (aa) Form No. 643, "DNRC Ownership Update, Severed Water Right," which must be submitted where a water right will be severed from the land. ~~A severed water right does not involve a land sale;~~

(ab) remains the same but is renumbered (ad).

(ae) (ae) Form No. 645, "Permit Registration for Groundwater Use within the National Park Service Compact Area", which must be submitted for groundwater developments with a maximum use of 35 GPM ~~gpm~~ or less, not to exceed ten acre-feet per year;

(af) (ad) Form No. 646, "Geothermal Heating/Cooling Notice of Completion", which must be submitted for groundwater developments for a geothermal purpose with a maximum use of 350 GPM ~~gpm~~;

(ae) remains the same but is renumbered (ag).

(af) Form No. 648, "Petition to Subordinate a State Water Reservation";

(ag) remains the same but is renumbered (ah).

(ah) Form No. 650, "Temporary Lease of Appropriation Right";

(ai) and (aj) remain the same.

(ak) Form No. 653, "DNRC Water Right Predetermination Request," which must be submitted for water rights predetermination requests required for the DEQ subdivision review process;

(al) Form No. 654, "Variance request," which must be submitted for variance requests in 36.12.123;

(am) Form No. 655, "Public Comment," which must be submitted for public comment under 85-2-307 (4), MCA; and

(an) Form No. 656, "Application Amendment Form," which must be submitted to modify an application under 36.12.1401.

AUTH: 85-2-113, MCA

IMP: 85-2-113, 85-2-306, 85-2-311, 85-2-316, 85-2-402, 85-2-424, 85-20-401, MCA

REASON: Outdated forms need to be removed and new forms associated with HB 114 need to be added. Also changing the title of some forms to improve clarity on purpose.

### 36.12.103 FORMS AND SPECIAL FEES

(1) remains the same.

(2) The department will assess the following filing fees:

(a) For an Application for Beneficial Water Use Permit, Form No. 600, filed pursuant to 85-2-330, 85-2-336, 85-2-341, 85-2-343, or 85-2-344, MCA, or in an administratively closed basin pursuant to 85-2-319, 85-2-321, or 85-2-322, MCA, or a controlled groundwater area pursuant to 85-2-506 and ~~85-2-507~~, MCA, or filed under a compact pursuant to Title 85, chapter 20, MCA, for all surface water, or a

groundwater appropriation of greater than 35 gallons per minute, there shall be a fee of ~~\$1000~~ \$3000. If the application meets the requirements for a ~~pre-application review~~ preapplication meeting as determined by the department under 36.12.1302, the fee shall be ~~\$800~~ \$1600;

(b) For an Application for Beneficial Water Use Permit, Form No. 600, filed pursuant to 85-2-330, 85-2-336, 85-2-341, 85-2-343, or 85-2-344, MCA, or in an administratively closed basin pursuant to 85-2-319, 85-2-321, or 85-2-322, MCA, or a controlled groundwater area pursuant to 85-2-506 and ~~85-2-507~~, MCA, or filed under a compact pursuant to Title 85, chapter 20, MCA, for a groundwater appropriation of 35 gallons per minute or less, there shall be a fee of ~~\$200~~ \$400;

(c) For an Application for Beneficial Water Use Permit, Form No. 600, not filed pursuant to 85-2-330, 85-2-336, 85-2-341, 85-2-343, or 85-2-344, MCA, nor in an administratively closed basin pursuant to 85-2-319, 85-2-321, or 85-2-322, MCA, nor a controlled groundwater area pursuant to 85-2-506 and ~~85-2-507~~, MCA, nor filed under a compact pursuant to Title 85, chapter 20, MCA, for all surface water, or a groundwater appropriation of greater than 35 gallons per minute there shall be a fee of ~~\$800~~ \$2500. If the application meets the requirements for a ~~pre-application review~~ preapplication meeting under 36.12.1302 as determined by the department, the fee shall be ~~\$600~~ \$1200;

(d) ~~\$150~~ \$300, in addition to the fees in either (a), (b), or (c) for an Interim Permit Request, Form No. 636;

(e) ~~\$125~~ \$250 for a Notice of Completion of Groundwater Development, Form No. 602, filed for groundwater developments with a maximum use of 35 GPM ~~gpm~~ or less, not to exceed ten acre-feet per year;

(f) ~~\$125~~ \$250 for an Application for Provisional Permit for Completed Stockwater Pit or Reservoir, Form No. 605, filed for a pit or reservoir with a maximum capacity less than 15 acre-feet;

(g) ~~\$900~~ \$2500 for an Application to Change a Water Right, Form No. 606, except for an application that meets the requirements for a ~~pre-application review~~ preapplication meeting under 36.12.1302 as determined by the department, where there shall be a ~~\$700~~ \$1500 fee;

(h) ~~\$200~~ \$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 35 GPM ~~gpm~~ or ten acre-feet, or a municipal well that does not exceed 450 GPM ~~gpm~~, or replacement reservoir located on the same source; or

(ii) remains the same.

(i) ~~\$200~~ \$400 for an Application for Extension of Time, Form No. 607;

(j) ~~\$50~~ \$100, plus ~~\$10~~ \$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 ~~\$300~~ \$600;

(k) ~~\$25~~ \$50 for an Objection to Application, Form No. 611;

(l) ~~\$200~~ \$400 for an Application to Renew a Temporary Water Right Change, Form No. 626;

(m) ~~\$1500~~ \$3000 for a Controlled Groundwater Area Petition, Form No. 630. The petitioner shall also pay:

(i) through (vi) remain the same.

- (n) ~~\$1500~~ \$3000 for a Petition for Closure of a Highly Appropriated Basin, Form No. 631. The petitioner shall also pay:
- (i) through (vi) remain the same.
  - (o) ~~\$100~~ \$150 for a Replacement Well Notice, Form No. 634;
  - (p) ~~\$50~~ \$200 for a Redundant Well Construction Notice, Form No. 635;
  - (q) ~~\$200~~ \$1000 for a Reinstatement Request, Form No. 637;
  - (r) ~~\$800~~ \$1600 for a Water Reservation Application for Instream Flow, Form No. 638. The applicant shall also pay:
    - (i) through (iv) remain the same.
    - (s) ~~\$50~~ \$150 for each divided water right on Form No. 641, DNRC Ownership Update, Divided Interest;
    - (t) ~~\$50~~ \$150 for each exempted water right on Form No. 642, DNRC Ownership Update, ~~Exempt (Reserved)~~ Split or Split and Sever of a Water Right;
    - (u) and (v) remain the same.
    - (w) ~~\$200~~ \$400 for Form No. 645, Permit Registration for Groundwater Use Within the National Park Service Compact Area;
    - (x) ~~\$200~~ \$400 for Form No. 646, Geothermal Heating/Cooling Notice of Completion;
    - (y) remains the same.
    - (z) ~~\$200 for Form No. 650, Temporary Lease of Appropriation Right;~~
    - (z)-(aa) ~~\$400~~ \$800 for Form No. 651, Petition to Modify a Permit or Change Authorization; ~~and~~
    - (aa) ~~(ab) \$750~~ \$1500 for Form No. 652, Petition for Stream Depletion Zone;
    - (ab) \$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 36.12.1302;
    - (ac) \$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 36.12.1302; and
    - (ad) \$100 for Form No. 653, DNRC Water Right Predetermination Request.
- (3) There shall be no fees charged for filing the following forms:
- (a) through (d) remain the same.
  - (e) Form No. 636, Petition to Subordinate a State Water Reservation;
  - (e) remains the same but is renumbered (f).
  - (g) ~~(f) Form No. 640, Certification of Water Right Ownership Update; and~~
  - (g) ~~Form No. 648, Petition to Subordinate a State Water Reservation; and~~
  - (h) remains the same.
  - (i) Form No. 654, Variance Request;
  - (j) Form No. 655, Public Comment; and
  - (k) Form No. 656, Application Amendment Form.
- (4) The department will charge special service fees not to exceed reasonable amounts, including, but not limited to the following:
- (a) through (b) remain the same.
  - (c) reasonable public information access fees including copies, blueprints or tracings, audio copies of a hearing, and other requests as per ~~2-6-110, MCA,~~ and department public information policy.

AUTH: 85-2-113, MCA

IMP: 85-2-113, 85-2-306, 85-2-311, 85-2-312, 85-2-314, 85-2-402, 85-2-426, 85-2-427, 85-2-436, 85-20-401, MCA

REASON: Legislature directed DNRC to increase fees to pay for resources necessary to implement HB 114. Outdated forms need to be removed and new forms associated with HB 114 need to be added. Also changing the title of some forms to improve clarity on purpose.

36.12.110 LEGAL LAND DESCRIPTION STANDARDS

(1) Primary ~~or secondary~~ points of diversion must be described as one or more of the following:

(a) through (c) remain the same.

(d) certificate of survey number with ~~or without~~ a lot number, if present, ¼ section, section, township, range and county; ~~or~~

(e) Latitude/longitude coordinates and the geodetic reference system used to collect the coordinates.

(2) remains the same.

(3) Transitory diversions must be described as the most upstream diversion point and the most downstream diversion point, ~~and a measurement in stream miles downstream from the upstream point. For example the transitory diversion will extend from the upstream point to approximately one mile downstream.~~

(4) If secondary diversions are described, they must "be identified as "secondary": and meet one of the description standards in (1).

(5) The legal land description for the place of use must be listed to the nearest ~~reasonable and concise~~ legal land description. ~~For example, it would be appropriate to describe 20 acres in the N½NWNW rather than ten acres in the NWNWNW and ten acres in the NENWNW. For a subdivision covering most of the SW, it would be appropriate to describe the place of use as the SW rather than the NWSW, NESW, SWSW, and SESW.~~

AUTH: 85-2-113, MCA

IMP: 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

REASON: These rule changes are to improve clarity of what information is needed and allow for latitude and longitude coordinates to be provided. Examples that are designed to explain the rule, as in (3) and (5) are best moved to explanatory documents and are not appropriate in the rule itself. The removal of the alternative method for describing transitory points of diversion is designed to increase consistency. There is no benefit or substantial difference between the descriptions and a single way to describe transitory points of diversion will be more consistent.

### 36.12.111 MAP STANDARDS

(1) ~~A United States geological survey (USGS) quadrangle maps or United States Department of Agriculture (USDA) Maps or aerial photographs~~ must be included with the application and the following items must be clearly identified on the map:

- (a) through (d) remain the same.
- (e) ~~all past and~~ proposed points of diversion;
- (f) ~~all past and~~ proposed places of use;
- (g) ~~past and~~ proposed reservoir locations, if applicable; and
- (h) ~~past and~~ proposed conveyance facilities ditch or pipeline locations; and
- (i) date the aerial photograph was taken, if available.

~~(2) Maps must reflect the place of use of all associated water rights.~~

~~(2) (3) Additional maps must be submitted if the information on one map cannot convey the required information clearly, and must be of the same scale so that they can be overlain.~~

~~(3) (4) For change applications to irrigation water rights, in addition to the information map required to be mapped in (1) and (2), the following items must be clearly identified on the map: a copy of the Water Resources Survey map, if available for the land affected by the change, shall be submitted with the historically irrigated acreage identified.~~

- (a) all past points of diversion;
- (b) all past places of use;
- (c) all past reservoir locations, if applicable; and
- (d) all past locations of conveyance facilities.

~~(5) For change applications, all historically irrigated acreage must be identified on an aerial photograph that shows the date the aerial photo was taken.~~

~~(6) In addition, a county plat map obtained from the county office may be submitted. The county plat map must show the same information as required under (4).~~

AUTH: 85-2-113, MCA

IMP: 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

**REASON:** Applicants currently have access to a wide variety of maps and aerial photographs that were not readily available at the time this rule was written. The alterations in (1) are designed to allow the use of modern map and photograph resources and not unduly restrict the source of the map or photograph. The removal of the same scale requirement in (2) simply recognizes that modern technology can easily overlay maps of different scales and the requirement is no longer useful or necessary. Relocating requirements for change application maps to improve clarity on what is required for each application type. For changes, there is no need for applicant to provide a copy of the WRS map as DNRC has these in their possession.

36.12.112 PERIOD OF DIVERSION AND PERIOD OF USE STANDARDS

(1) The department will use the following standards for period of diversion and use based on the purpose of beneficial water use: Deviations from the standards listed below require information supporting the period of diversion or use requested in an application:

(a) through (c)(v) remain the same.

(vi) climatic area VI April 25 to October 5

(2) remains the same.

~~(3) Applications for temporary permits must identify the beginning and ending month, day, and year.~~

(3) (4) Period of use for purposes other than domestic, stock, or irrigation. The basis for the requested periods for other uses must be explained and documented based on the operation of the project.

(4) Deviations from the period of use standards listed in (1) must be explained and documented based on the operation of the project.

AUTH: 85-2-113, MCA

IMP: 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

REASON: The changes to the rule here are for better grammar and clarity. Climatic region VI does exist and needs to be included for completeness. The deletion of (3) above is because it does not refer to either period of diversion or period of use and is out of place. The new (3) clarifies that for uses other than domestic, stock or irrigation, an explanation of the requested period of use be provided for. Changes to this are to improve clarity as the existing rule is not clear about this requirement. The addition of (4) allows applicants to explain why the department standard period of diversion or use does not work and allows them to explain their need based upon the specific project.

36.12.113 RESERVOIR STANDARDS

(1) An application ~~project~~ involving a new or existing reservoir must identify the capacity of the reservoir and include the annual volume of water that will evaporate net evaporation pursuant to 36.12.116 from the reservoir water surface.

(2) through (5) remain the same.

(6) Place of storage does not include:

(a) reservoirs, pits, pit-dams, or ponds with a capacity of less than 0.10 acre-feet; ~~or~~

(b) the use of a temporary or permanent diversion structure within a canal or ditch designed to raise water surface elevation for primary diversions or to direct flows to a secondary conveyance facility; or

(c) (7) Water tanks or cisterns that are a part of a water system are not considered storage reservoirs and a water right application is not needed to add a

water storage tank or cistern as long as the flow rate and volume of a water right is not being increased.

(8) remains the same but renumbered (7).

AUTH: 85-2-113, MCA

IMP: 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

REASON: Clarifying that reservoir capacity is needed and that evaporation calculations should be based on net evaporation, which is a more accurate representation of what is really occurring. Number (7) is redundant and more appropriately included under (6) as things that are not considered storage. This change cleans up the organization of the rule and adds clarity.

36.12.115 WATER USE VOLUME STANDARDS

~~(1) A water right has several elements, one of which is the amount of water that is used for each purpose described in the right. A reasonable amount of water will vary with the type and location of the use and will depend on various circumstances such as:~~

- ~~(a) soil conditions;~~
- ~~(b) method of conveyance;~~
- ~~(c) topography;~~
- ~~(d) climate;~~
- ~~(e) system efficiency; or~~
- ~~(f) other conditions affecting the particular use.~~

~~(1) (2) The department will use the following standards Form No. 615 to determine water volume requirements when reviewing notices or applications for new uses of water.:~~

- ~~(a) for domestic use, for one household, 1.0 acre-foot per year of water for year-round use;~~
- ~~(b) for lawn, garden, shrubbery, and shelterbelts, 2.5 acre-feet per acre per year;~~
- ~~(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 water conversion table, Form No. 615;~~
- ~~(d) fire protection water needs shall be determined by the type of equipment used, diversion rate, the size of the area to be covered, the frequency of the water use and must be explained and documented.~~
- ~~(e) For irrigation, the following table applies:~~

~~Irrigation Standards~~

	Climatic Area <sup>1</sup> Acre Feet per Acre				
	I	II	III	IV	V
Sprinkler Irrigation	<del>2.63—3.04</del>	<del>2.30—2.69</del>	<del>2.08—2.41</del>	<del>1.76—2.07</del>	<del>1.26—1.48</del>

70% Efficiency					
Level Border 60% Efficiency Design Slope Level	3.07 - 3.55	2.69 - 3.15	2.43 - 2.81	2.06 - 2.41	1.47 - 1.73
Graded Border 70% Efficiency Slope Group Design Slope .10% Design Slope .20% Design Slope .40%	2.63 - 3.04	2.30 - 2.69	2.08 - 2.41	1.76 - 2.07	1.26 - 1.48
Graded Border 65% Efficiency Design Slope .75% Design Slope 1.5%	2.84 - 3.28	2.48 - 2.90	2.24 - 2.59	1.90 - 2.23	1.36 - 1.60
Graded Border 60% Efficiency Design Slope 3.0%	3.07 - 3.55	2.69 - 3.15	2.43 - 2.81	2.06 - 2.41	1.47 - 1.73
Furrow 70% Efficiency Design Slope .10% Design Slope .20% Design Slope .40%	2.36 - 2.74	2.11 - 2.44	1.87 - 2.16	1.39 - 1.70	NA
Furrow 65% Efficiency Design Slope .75%	2.54 - 2.95	2.27 - 2.63	2.02 - 2.33	1.50 - 1.83	NA
Furrow 60% Efficiency Design Slope 1.5%	2.75 - 3.19	2.46 - 2.85	2.19 - 2.52	1.62 - 1.98	NA
Contour Ditch 60% Efficiency Design Slope .75%	3.07 - 3.55	2.69 - 3.15	2.43 - 2.81	2.06 - 2.41	1.47 - 1.73
Contour Ditch 55% Efficiency Design Slope 1.5% Design Slope 3.0%	3.35 - 3.87	2.93 - 3.43	2.65 - 3.07	2.24 - 2.63	1.60 - 1.88
Contour Ditch 45% Efficiency Design Slope 6.0%	4.10 - 4.73	3.58 - 4.19	3.24 - 3.75	2.74 - 3.22	1.96 - 2.30

<sup>1</sup>The irrigation climatic areas are identified in the 1986 Irrigation Climatic Areas of Montana map. Climatic area I is high consumptive use, climatic area II is moderately high consumptive use, climatic area III is moderate consumptive use, climatic area IV is moderately low consumptive use, and climatic area V is low consumptive use.

~~(3) A permit is required when a reservoir is proposed to include fire protection purposes and the volume of water reasonably needed for fire protection must be explained and must reference reliable industry sources.~~

~~(4) For fire protection reservoirs located within a basin closure area, evaporation losses must be made up from nontributary water sources or addressed in a mitigation plan.~~

~~(2) (5) The flow rate and volume of water for any uses not listed on Form No. 615 in this rule must be calculated, explained, and documented based on the beneficial use and operation of the project.~~



(3) ~~(6)~~ Deviations outside the standards will require information supporting the requested amount.

AUTH: 85-2-113, MCA

IMP: 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

REASON: Adding "volume" to the title because we don't apply standards for flow rate. Removing the explanatory section of (1) because it is not appropriate for rule. Removing the limited standards referenced in this rule and including the use of Form No. 615 because it contains multiple water use standards in addition to those listed. Fire protection was removed because it is better covered under other uses that requires calculation, explanation and documentation and should not be called out separately.

### 36.12.116 EVAPORATION STANDARDS

(1) ~~The following reports contain acceptable methods for estimating evaporation losses:~~ Net Evaporation will be evaluated using:

~~(a) Joint Technical Working Group Report, Water Rights Compact Between the State of Montana and the Department of the Interior, Bureau of Land Management, November 1998;~~

~~(a) (b) Estimation of Evaporation from Shallow Ponds and Impoundments in Montana, Donald E. Potts, Miscellaneous Publication No. 48, Montana Conservation and Experiment Station School of Forestry, University of Montana, Missoula, March 1988;~~

~~(b) (c) Evaporation Pond Design for Agricultural Wastewater Disposal, USDA Soil Conservation Service, Montana Technical Note: Environment No. 7, February 1974; or~~

~~(c) other department-approved methods.~~

~~(d) Evaporation from Lakes and Reservoirs, a study based on 50 years of weather bureau records, Minnesota Resource Commission, June 1942; and~~

~~(e) A standard USGS evaporation pan is acceptable. The standard pan is four feet in diameter and ten inches deep and measured daily.~~

(2) ~~Deviations~~ If the applicant proposes to deviate from the acceptable standards in (1), require the applicant will be required to provide additional information supporting the volume requested for ~~evaporation losses~~ net evaporation.

(3) The department will determine the acceptability of other ~~evaporation loss~~ net evaporation estimates on a case-by-case basis.

AUTH: 85-2-113, MCA

IMP: 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

REASON: The most accurate way to evaluate evaporation is by calculating net evaporation. Changes are being made to clarify this. In addition, there are only two reports that are commonly used to evaluate net evaporation and the other two should be deleted. As newer potentially better methods become available the department needs to be able to evaluate them and allow applicants to use the new methods.

### 36.12.121 AQUIFER TESTING REQUIREMENTS

(1) Aquifer testing design and procedures must follow standard procedures that are discussed in hydrogeology textbooks and professional literature. A hydrogeologist, hydrologist, or engineer familiar with aquifer testing procedures must supervise the aquifer test; however, the supervisor does not need to be on site.

~~(a) Applicants are encouraged to confer with department staff prior to designing an aquifer test to ensure that the test will not have to be repeated, which may require additional expense.~~

~~(b) Department staff will provide guidance on testing procedures, monitoring, and reporting, but will not provide technical support or assistance. Requests for variance from testing requirements must be submitted to the appropriate regional office manager.~~

(2) Minimum information that must be submitted with applications:

(a) a topographic map with labeled location of production and observation wells and water discharge point;

~~(b) if available, a geologic map, stratigraphic, geomorphic, or lithologic descriptions, and drilling logs well logs of production and observation wells;~~

~~(c) distances between the pumping well and the observation well, and depths, dimensions, and perforated intervals of each well as specified on Form No. 633;~~

~~(d) wellhead elevation, surveyed elevations if available;~~

~~(e) a description of testing methods; and~~

~~(c) (f) Form No. 633, in electronic format, with all information and data provided.~~

(3) Minimum testing procedures are as follows:;

(a) Pumping must be maintained at a constant discharge rate throughout the duration of the test. The rate may not depart from the average pumping rate by more than 5%.

~~(b) The discharge average pumping rate must be equal to or greater than the proposed flow rate for the entire duration of the test if the application is for one well or if the total proposed rate for multiple wells can be obtained from a single well. The discharge rate may be less than the proposed rate if the application is for multiple wells and the total proposed rate cannot be obtained from a single well, so long as the remainder can be demonstrated from the remaining wells under (f).~~

~~(c) Discharge rate must be measured with a reliable measuring device and recorded with clock time according to the schedule on Form 633. The proposed pumping rate may be demonstrated by testing multiple wells as long as (e) is met by~~

one well and the remaining flow rate is demonstrated by eight-hour drawdown and yield tests on additional production wells under (e)(ii) and (e)(iii).

~~(d)-(e) Discharge Pumping rate must be measured with a reliable measuring device and recorded with clock time according to the schedule on Form No. 633.~~

~~(e)-(d) Minimum duration of pumping during an aquifer test must be 24 hours for a proposed use or discharge pumping rate and volume equal to or less than 150 GPM gpm or less and a proposed volume of 50 acre-feet or less, or 72 hours for a proposed pumping rate and volume greater than 150 GPM or 50 acre-feet.~~

(i) At a minimum if a variance from (e) is granted, an eight-hour drawdown and yield test is required on all new production wells.

(ii) In addition to (e), if more than one new production well is proposed, at a minimum an eight-hour drawdown and yield test is required on all subsequent new production wells.

(iii) The testing procedures for a minimum eight-hour drawdown and yield test performed on any production well must follow (a), (d), and (h).

~~(e) Minimum duration of pumping during an aquifer test must be 72 hours for a proposed use or discharge of greater than 150 gpm and proposed volume greater than 50 acre-feet.~~

~~(f) Eight hours duration drawdown and yield tests must be conducted on additional production wells.~~

~~(g) Discharged water must be conveyed a sufficient distance from the production and observation wells to prevent recharge to the aquifer during the test. Adequate water conveyance devices include pipe, large diameter hose (e.g., fire hose), lined ditch or canal, or an existing irrigation system.~~

~~(f)-(h) One or more observation wells must be completed in the same water-bearing zone(s) or source aquifer as the proposed production well and close enough to the production well so that drawdown is measurable and far enough that well hydraulics do not affect the observation well. If existing wells are monitored they must not be pumped, or if pumped should be monitored at a frequency necessary to separate the effects of the pumping.~~

~~(i) Electronic pressure transducer/data logger instrumentation, electric well probes, pressure gauges on turbine pumped wells, or graduated steel tapes are acceptable methods of measuring groundwater levels.~~

~~(g) (j) Background Ggroundwater levels in the production well and observation well(s) must be monitored at frequent intervals for at least two days prior to beginning the aquifer test according to Form No. 633. to evaluate background water level trends. An applicant must evaluate and correct for background water level trends.~~

~~(h) (k) Water levels in the production well and/or observation well(s) must be measured reported with 0.01-foot precision according to the schedule specified on Form No. 633.~~

(4) An applicant may make a written request for a variance from the aquifer testing requirements in subsections (2) and (3). The variance process is provided for in 36.12.123.

AUTH: 85-2-113, 85-2-370, MCA;

IMP: 85-2-302, 85-2-311, 85-2-330, ~~85-2-337~~, 85-2-341, 85-2-343, 85-2-344, 85-2-360, 85-2-361, 85-2-362, 85-2-402, 85-2-506, 85-2-508, MCA

REASON: Proposed changes clean up rules by removing unnecessary information so that focus is only on relevant information needed. Adding clarity that 8-hour drawdown and yield tests are required on additional production wells in a multi-well system.

36.12.1401 PERMIT AND CHANGE APPLICATION MODIFICATION

(1) After application acceptance, an applicant may modify any ~~Any~~ element of a permit or change application ~~may be modified~~ prior to the department's issuance of a draft preliminary determination.

(a) Modification of an element of a permit or change application requires an application amendment Form No. 656 to be submitted to the department which identifies the elements being modified;

(b) modification of an element will reset the statutory timelines for application processing identified in 85-2-302 and 85-2-307, MCA.

(i) if the applicant completed a preapplication meeting and the modification does not require the department to update its technical analyses, the reduced preapplication timelines shall still apply.

(ii) if the applicant completed a preapplication meeting and the modification requires the department to update any of its technical analyses, the reduced preapplication timelines shall no longer apply.

(2) remains the same.

(3) In addition to resetting timelines identified in (1), ~~The~~ the priority date of a permit application ~~or the date received of a change application~~ will be changed to the date the last modification was made if a modification changes the nature or scope of the permit ~~or change~~ application information. A change in the nature or scope of the permit ~~or change~~ includes the following types of modifications:

(a) through (j) remain the same.

(4) If the draft Preliminary Determination is to deny or to grant with modifications, the applicant may modify their application, after the draft preliminary determination has been issued. The applicant may modify their application only if they have been granted an extension of time under 85-2-307(3), MCA and may only modify it one time under this provision.

~~(4) If an applicant decides at any point in the water right application process to complete a different application for the same project the applicant must complete a new application form and pay the applicable filing fee. The date received will be the date the new application is submitted to the department. The department will review the application based on the requirements for that type of application.~~

AUTH: 85-2-113, MCA

IMP: 85-2-302, 85-2-307, MCA

REASON: Changes made to this ruleset are to incorporate and codify the application modification process built out with stakeholders. The goal is to provide

clear steps for when an application can be modified and what happens when the application is modified.

36.12.1501 PERMIT AND CHANGE APPLICATION DEFICIENCY LETTER AND TERMINATION

(1) If the department determines the application does not contain the information requested in ARM 36.12.1601, the department will notify the applicant in one deficiency letter of any defects in a permit or change application ~~within 180 days of receipt of the application.~~ The defects and the administrative rules not met will be identified in the deficiency letter.

(a) if a preapplication meeting is held, and the application is filed in compliance with 36.12.1302, the applicant will be notified of any defects within 15 business days of receipt of the application by the appropriate regional office.

(b) if there was no preapplication meeting, the applicant will be notified of any defects within 30 business days of receipt of the application by the appropriate regional office.

(2) remains the same.

AUTH: 85-2-113, MCA

IMP: 85-2-302, MCA

REASON: Modifications are to incorporate timelines associated with the preapplication meeting in HB 114.

36.12.1601 WATER RIGHT PERMIT AND CHANGE APPLICATION CORRECT AND COMPLETE DETERMINATION

(1) remains the same.

(2) A correct and complete application must conform to the standard of substantial and credible information and all applicable sections of the application form and addendums must be completed with the required information.

(2) through (4) remain the same but are renumbered (3) through (5).

~~(5) A water right permit application will be deemed correct and complete if a permit applicant's information, required to be submitted by ARM 36.12.110 through 36.12.116, 36.12.120, 36.12.121, 36.12.1301, 36.12.1401, 36.12.1701 through 36.12.1707, and 36.12.1802, conforms to the standard of substantial credible information and all the necessary parts of the application form requiring the information, including any required addendums, have been filled in with the required information.~~

~~(6) A water right change application will be deemed correct and complete if an applicant's information, required to be submitted by ARM 36.12.110 through 36.12.116, 36.12.121, 36.12.1301, 36.12.1401, 36.12.1801, 36.12.1802, 36.12.1901 through 36.12.1904, and 36.12.2001, conforms to the standard of substantial credible information and all the necessary parts of the application form requiring the information, including any required addendums, have been filled in with the required information.~~

AUTH: 85-2-302, MCA

IMP: 85-2-302, MCA

REASON: HB 114 is overhauling the application process so that instead of referencing a list of rules the department must review to evaluate an application for correct and complete, the application and addenda will identify all information required from the applicant. If an application is completed with all the required information, the application will meet the requirements for correct and complete. Existing rules for correct and complete are confusing and these changes are also to reduce confusion about what constitutes a correct and complete application.

36.12.1702 PERMIT APPLICATION CRITERIA - PHYSICAL SURFACE WATER AVAILABILITY

(1) Physical availability for perennial or intermittent streams will be determined based on monthly flow rate and volume.

(a) ~~(1) If actual stream gage records are available, or the source has been otherwise measured or quantified by a public entity, the~~ those measurement records shall be used to estimate the median of the mean monthly flow rates and volumes for the stream gaging station period of record during the proposed months of diversion at the source of supply in the amount the applicant seeks to appropriate. quantify physical availability during the proposed months of diversion.

(b) If measurement records pursuant to subsection 1(a) are not available, physical availability may be estimated using a department accepted method in conjunction with applicant collected flow measurements to validate the estimation technique. The applicant must collect a minimum of three measurements that reflect high, moderate, and low flows during the period of diversion. The applicant shall explain how the measurements are representative of high, moderate, and low flows.

(2) Physical availability for ephemeral streams will be determined based on annual runoff volume above the proposed point of diversion using climate and drainage area data.

(3) Physical availability for a lake will be determined based on stored volume.

(a) If the volume of a lake has been quantified by a qualified entity based on bathymetric data, that volume will be used to quantify physical availability.

(b) If the volume of a lake has not been quantified pursuant to subsection 3(a), volume may be quantified by a qualified professional based on department approved methodology.

(4) For all other source types, physical availability of water will be determined based on monthly flow rate and volume. The applicant is required to collect measurements for these sources once monthly at department approved intervals during the proposed period of diversion.

(5) Streamflow measurements must be submitted on Form No. 649 in electronic format.

(6) The department will determine the acceptability of measurements based on the information submitted. Measurements collected by an applicant must be measured in CFS or GPM and be collected at a department approved location on the source of supply. The department may require from the applicant additional information and data necessary to complete its analysis.

(7) An applicant may make a written request for a variance from the measurement requirements in subsections 1(b) or 4 as provided for in 36.12.123.

~~(2) If actual stream gaging records are not available, or the source has not been otherwise measured or quantified by a public entity, an accepted method for estimating surface water flow rates and volumes shall be used in conjunction with discharge measurements to validate the estimation technique used.~~

~~(3) Except as provided in (4), stream flow measurements in cfs or gpm must be collected at least once every month during the proposed period of diversion at the most suitable location on the source of supply, which is typically at or directly upstream of the proposed point of diversion.~~

~~(4) If it is not possible to take measurements every month due to high spring flow conditions or other limiting conditions, the department may grant a variance to the measurement requirements in (3).~~

~~(a) A request for a variance from measurement requirements must be submitted in writing to the appropriate regional office.~~

~~(b) A variance may not completely relieve the applicant of the requirement of taking measurements.~~

~~(5) Measurements must be submitted on Form 649 in electronic format with all information and data provided.~~

~~(6) In addition to validating estimation techniques, measurements may, in some cases and upon approval of the department, be used as evidence of physical availability.~~

~~(7) The methods described in the following reports may be acceptable for estimating surface water flow rates and volumes:~~

~~(a) "A Method for Estimating Mean and Low Flows of Streams in National Forests of Montana," USGS Water Resources Investigation Report 85-4071;~~

~~(b) "Estimated Monthly Percentile Discharges at Ungaged Sites in the Upper Yellowstone River Basin in Montana," USGS Water Resources Investigation Report 86-4009;~~

~~(c) "A Method for Estimating Mean Annual Runoff of Ungaged Streams Based on Characteristics in Central and Eastern Montana," USGS Water Resources Investigation Report 84-4143;~~

~~(d) "Estimates of Monthly Flow Characteristics at Selected Sites in the Upper Missouri River Basin, Montana, Base Period Water Years 1937-86," USGS Water Resources Investigations Report 89-4082;~~

~~(e) "Mean Annual Runoff and Peak Flow Estimates Based on Channel Geometry of Streams in Southeastern MT," USGS Water Resources Investigation Report 82-4092;~~

~~(f) "Mean Annual Runoff and Peak Flow Estimates Based on Channel Geometry of Streams in Northeast and Western Montana," USGS Water Resources Investigation Report 83-4046;~~

~~(g) "Estimates of Mean Monthly Stream Flow for Selected Sites in the Musselshell River Basin, Montana," USGS Water Resources Investigation Report 89-4165;~~

~~(h) "Synthesis of Monthly and Annual Streamflow Records (Water Years 1950-2003) for Big Sandy, Clear, Peoples, and Beaver Creeks in the Milk River Basin, Montana", USGS SIR 2005-5216;~~

- (i) ~~"Synthesis of Monthly Natural Flows for Selected Sites in the Musselshell River Basin, Montana, Base Period 1929-89", USGS WRIR 96-4094;~~
- (j) ~~"Synthesis of Natural Flows at Selected Sites in and near the Milk River Basin, Montana, 1928-89", USGS WRIR 95-4022;~~
- (k) ~~"Estimates of Monthly Streamflow Characteristics and Dominant Discharge Hydrographs for Selected Sites in the Lower Missouri and Little Missouri Basins in Montana", USGS WRIR 94-4098;~~
- (l) ~~"Streamflow Characteristics of Small Tributaries of Rock Creek, Milk River Basin, Montana, Base Period Water Years 1983-87", USGS WRIR 89-4206;~~
- (m) ~~"Methods for Estimating Monthly Streamflow Characteristics at Ungaged Sites in Western Montana", USGS WSP 2365; and~~
- (n) ~~"Streamflow Characteristics of Mountain Streams in Western Montana", USGS WSP 2260.~~
- (o) ~~Other professionally documented hydrologic methods for estimating stream flow or annual runoff which may be applicable and acceptable to the department, including the Orsborn method, Mannings equation, U.S. Natural Resources Conservation Service developed mean annual runoff data, and drainage area information paired to gaged streams in similar type basins may be acceptable. The department will determine the acceptability of other methods on a case-by-case basis.~~

AUTH: 85-2-113, 85-2-302, MCA

IMP: 85-2-302, 85-2-311, MCA

REASON: Existing rule doesn't consider nature of the source and doesn't consider all types of surface water. Changes have been made to improve overall organization of the rule and identify how physical availability will be evaluated for the different source types.

### 36.12.1703 PERMIT APPLICATION CRITERIA - PHYSICAL GROUND WATER GROUNDWATER AVAILABILITY

(1) Applicants for groundwater from a developed spring must provide monthly flow measurements taken at regular intervals or at department approved intervals during the proposed period of diversion. Measurements must be submitted with all information and data necessary for department analysis. The department will determine the acceptability of measurements based on the information submitted. Electronically formatted records may be required. An applicant cannot receive a variance from the monthly measurement requirement for developed springs.

(2) (1) Applicants for groundwater from a means of diversion other than a developed spring must follow aquifer testing requirements and provide to the department, at minimum, information and data in conformance with ARM-36.12.121 unless a variance has been granted by the department under 36.12.123.

(3) Physical availability of groundwater will be determined using the measurements in (1) or through evaluation of the aquifer test data in (2).

(2) The department will complete an evaluation of drawdown in the applicant's production well for the maximum pumping rate and total volume requested in the permit application using the information provided from the aquifer test.



~~(3) The department will compare the drawdown projected for the proposed period of diversion to the height of the water column above the pump in the proposed production well to determine if the requested appropriation can be sustained.~~

~~(4) The requirements of ARM 36.12.121 must be followed, unless a variance has been granted by the department.~~

AUTH: 85-2-113, 85-2-302, MCA  
IMP: 85-2-302, MCA

REASON: Developed springs cannot be modeled and need to be measured. The department needs to be able to determine if the submitted measurements are done properly. Drawdown in production wells is related to adequacy of diversion and is being moved to address in the adequacy of diversion rules. Adding clarity on how physical availability of groundwater will be evaluated.

36.12.1704 PERMIT APPLICATION - EXISTING LEGAL DEMANDS LEGAL AVAILABILITY

~~(1) Legal demands usually exist on the source of supply or its downstream tributaries and may be affected by a proposed water right application, including prior appropriations and water reservations. These existing legal demands will be senior to a new application and the senior rights must not be adversely affected:~~

~~(a) an applicant may use a plan for mitigation or aquifer recharge, as generally defined in 85-2-102, MCA, as a means of showing water is legally available.~~

(1) (2) The department will identify and quantify the existing legal demands on the source of supply and those waters to which it is tributary and which the department determines may be affected by the proposed appropriation. Legal demands will be identified based on the water right records in the Water Rights Information System.

(a) For groundwater appropriations, this shall include identification and quantification of existing legal demands for any surface water source that the department determines will ~~could~~ be depleted as a result of the groundwater appropriation;

(2) The department will compare the physical water supply at the proposed point of diversion and the legal demands within the area of potential impact to determine if water is legally available for the proposed permit. For groundwater permits, the department will compare the physical water supply and existing legal demands for impacted groundwater sources and surface water sources it determines will be depleted pursuant to subsection (1)(a), to determine if water is legally available.

(a) the department may consider an applicant's mitigation or aquifer recharge plan as evidence that water is legally available.

(b) the department may consider additional water right information as evidence that water is legally available.

AUTH: 85-2-113, 85-2-302, MCA

IMP: 85-2-302, MCA

REASON: Adding clarity on WRIS being source of information for compiling legal demands. Adding clarity that the department will identify depleted surface water sources. Consolidating 1704 and 1705 into one rule which addresses how legal demands will be identified and what the comparison of physical availability and existing legal demands will look like. Existing rule is confusing because it addresses how legal demands will be identified in 1704 and how the comparison will occur in 1705. Allowing the option for additional information other than that specifically in a water right file to be considered when evaluating legal availability.

36.12.1706 PERMIT APPLICATION CRITERIA - ADVERSE EFFECT

~~(1) Adverse effect for permit applications is based on the applicant's plan showing the diversion and use of water and operation of the proposed project can be implemented and properly regulated during times of water shortage so that the water rights of prior appropriators will be satisfied. An application must include a plan to address adverse effect. The plan must establish how the applicant will comply with a call and describe how the appropriation can be regulated during times of water shortage so the water rights of prior appropriators will not be adversely affected.~~

~~(2) The applicant's plan may include the use of mitigation or aquifer recharge as defined in 85-2-102, MCA, as a means of offsetting any adverse effect.~~

~~(2) (3) A written narrative must be provided addressing the applicant's plan to prevent potential adverse effects to existing water rights, certificates, permits, and water reservations. The adverse effect plan may include:~~

~~(a) and (b) remain the same.~~

~~(c) the use of a mitigation or aquifer recharge plan as a means of offsetting adverse effect; or~~

~~(d) remains the same.~~

~~(4) remains the same but is renumbered (3).~~

AUTH: 85-2-113, 85-2-302, MCA

IMP: 85-2-302, MCA

REASON: General changes are removing and replacing existing language in the rules for brevity. Also, reorganizing for better flow of the rule.

36.12.1707 PERMIT APPLICATION CRITERIA - ADEQUATE DIVERSION MEANS AND OPERATION

~~(1) through (4) remain the same.~~

~~(5) Preliminary design plans and specifications for the diversion and conveyance facilities and the equipment used to put the water to beneficial use must be submitted including the following:~~

~~(a) and (b) remain the same.~~

~~(c) the proposed diversion schedule, such as number and timing of irrigation sets~~

~~(d) remains the same but is renumbered (c).~~

~~(d)~~(e) the flow rate and operation of diversions must be described, including the proposed diversion schedule.

(6) remains the same.

(7) For groundwater wells, the department will compare the drawdown projected for the proposed period of diversion to the height of the water column above the bottom of the proposed production well to determine if the well design is adequate for the proposed appropriation.

AUTH: 85-2-113, 85-2-302, MCA

IMP: 85-2-302, MCA

**REASON:** Rule currently has the evaluation of drawdown of the proposed production well in the physical availability section. This analysis is more applicable to the evaluation of adequacy of diversion. Other change is to consolidate two similar rules into one.

#### 36.12.1801 PERMIT AND CHANGE APPLICATIONS - BENEFICIAL USE

~~(1) Water may be appropriated for beneficial use:~~

~~(a) by a governmental entity for the public;~~

~~(b) by a person for the sale, rent, or distribution to others; or~~

~~(c) by a person for the person's own use, unless provided otherwise by statute.~~

~~(d) or for other person's use, according to law.~~

(2) remains the same but is renumbered (1).

(a) how the purpose for the water benefits the applicant or other persons as authorized by law; and

(b) remains the same.

(3) remains the same but is renumbered (2).

(a) the requested volume of water for each purpose conforms to standards set out in ARM 36.12.115 for a permit application or ARM 36.12.1902 for a change application; and

(b) there are no other associated or overlapping water rights appurtenant to the proposed place of use; or

(c) the purpose of use, place of use, and operation plan for using water is not changing from that found by the department's historical use analysis.

AUTH: 85-2-113, 85-2-302, MCA

IMP: 85-2-302, MCA

**REASON:** Removing explanation of who can appropriate water for beneficial use. Language deemed unnecessary because there is not a restriction of who can apply for a water right and an applicant must explain how the use is beneficial for them. Allows for applicant to not have to explain beneficial use if it is not changing from historical practices. Other changes are for improving clarity.

#### 36.12.1903 CHANGE APPLICATION - ADVERSE EFFECT

(1) Lack of adverse effect for change applications is generally based on the applicant's plan showing the diversion and use of water and operation of the proposed project will not exceed historical use, and can be implemented and properly regulated. A written narrative must be provided addressing the applicant's plan to prevent potential adverse effects to existing water rights, certificates, permits, and water reservations.

(2) The applicant's plan must document the effects to the other water rights including, but not limited to, the following:

(a) through (d) remain the same.

(e) the effects of changing the historical diversion pattern including rate and timing of depletions;

(f) for groundwater applications, the applicant shall explain how the changed water right will affect water levels in wells of junior and senior water rights and the rate and timing of net depletions from hydraulically connected surface waters, and what effect those changes will have on those water rights within the notice area.

AUTH: 85-2-113, 85-2-302, MCA

IMP: 85-2-302, MCA

REASON: The department evaluates net depletion to surface water. Net depletion is defined in rule. This is a clean-up change.

36.12.1904 CHANGE APPLICATION CRITERIA - ADEQUATE DIVERSION MEANS AND OPERATION

(1) remains the same.

(2) Preliminary design plans and specifications for the current and/or proposed diversion and conveyance facilities and the equipment used to put the water to beneficial use must be submitted with the application including the following:

(a) through (b) remain the same.

(c) the historical and proposed flow rate and volume design capacity.

(3) remains the same.

(4) Wells must be constructed according to ARM Title 36, chapter 21, subchapter 6.

(5) For developed springs an explanation of how the spring will be developed must be included in the application.

(6) For groundwater wells, the department will compare the drawdown projected for the proposed period of diversion to the height of the water column above the bottom of the proposed production well to determine if the well design is adequate for the proposed appropriation.

AUTH: 85-2-113, 85-2-302, MCA

IMP: 85-2-302, MCA

REASON: Adding consistency for adequacy of diversion by requiring the same well construction standards and developed spring explanation for permits and changes. Groundwater changes need to conform to requirements of adequate diversion

because a new well and an old well or a developed spring may not behave identically. One cannot assume that because an existing well is adequate that a new well will be.

5. The department proposes to repeal the following rules:

36.12.1301 PERMIT AND CHANGE APPLICATION ACCEPTANCE

AUTH: 85-2-113, MCA  
IMP: 85-2-302, 85-2-310, MCA

REASON: Proposing to delete the permit and change application acceptance rules because the important elements are being incorporated into new rules. HB 114 modified the timelines and process for application review and specifically introduced the increased reliance upon and importance of the preapplication meeting. This new rule codifies how the department will conduct and use preapplication meetings.

36.12.1701 FILING A PERMIT APPLICATION

AUTH: 85-2-113, MCA  
IMP: 85-2-302, 85-2-310, MCA

REASON: Consolidating 36.12.1301 and 36.12.1701 into a new rule that addresses filing a permit application and application receipt. This is to improve clarity in the filing process. Because of this, we are proposing to strike 36.12.1701 as it currently exists.

36.12.1705 PERMIT APPLICATION CRITERIA - COMPARISON OF PHYSICAL WATER AVAILABILITY AND EXISTING LEGAL DEMANDS

AUTH: 85-2-113, 85-2-302, MCA  
IMP: 85-2-302, MCA

REASON: Proposing to repeal 36.12.1705 and include important elements into 36.12.1704.

36.12.1901 FILING A CHANGE APPLICATION

AUTH: 85-2-112, 85-2-113, 85-2-302, MCA  
IMP: 85-2-302, 85-2-401, 85-2-402, 85-2-407, 85-2-408, 85-2-436, MCA

REASON: Consolidating 36.12.1301 and 36.12.1901 into a new rule that addresses filing a change application and application receipt. This is to improve clarity in the filing process. Because of this, we are proposing to strike 36.12.1901 as it currently exists.

6. 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 in writing to: Martin Balukas, Department of Natural Resources and Conservation, 1539 Eleventh Avenue, P.O. Box 201601, Helena, MT 59620-1601, or e-mail at [DNRCOAH@mt.gov](mailto:DNRCOAH@mt.gov), and must be received no later than 5:00 p.m. on November 3, 2023.

7. Martin Balukas, Department of Natural Resources and Conservation, has been designated to preside over and conduct this hearing.

8. 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 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. Such written request may be mailed or delivered to the contact person in 2 above or may be made by completing a request form at any rules hearing held by the department.

9. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by e-mail on August 01, 2023.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption, amendment, and repeal of the above-referenced rules [will/will not] significantly and directly impact small businesses.

/s/ Brian Bramblett  
Brian Bramblett  
Rule Reviewer

/s/ Amanda Kaster  
Amanda Kaster  
Director  
Natural Resources and Conservation

Certified to the Secretary of State September 26, 2023.