



HB 441: Alignment of Provisional Water Rights and Final Decree

*This bill draft is a product of DNRC's **Comprehensive Water Review Stakeholder Working Group**, which spent the past interim collaborating on policy recommendations for water resource administration in Montana.*

Did you know that water permits and change authorizations issued by DNRC are currently considered “provisional”? That’s because they are subject to the statewide water adjudication of pre-July 1, 1973 water rights. Statute and case law require that, after the adjudication concludes, the State conduct a **petition process** to confirm that DNRC-issued provisional permits and changes do not need to be reduced, modified, or revoked as a result of findings in the final decree.

WHAT DOES THIS BILL DO? This bill provides **certainty, finality, and due process** for both adjudicated water rights holders and provisional permit holders by:

- **Defining a clear process for pre-1973 adjudicated water right holders to petition DNRC to reduce, modify, or revoke a provisional permit based on the final decree.** The bill establishes notice requirements, hearing procedures, and timelines to keep the process efficient and time bound. Only pre-1973 water rights holders may submit a petition. The petition must show that the provisional permit needs to be modified or denied based on information in the final decree. If no petition is filed on a given provisional permit, and the water use is completed based on the terms and conditions of the permit, it becomes a certificate of water right under 85-2-315, MCA.
- **Ensuring that DNRC verification of changes consider findings of the final decree.** Verification is an existing DNRC process to confirm that change applications are completed consistently with the terms of the authorization. This bill expands verification to include checking for consistency with the final decree.
- **Creating a process for issuing certificates of water right for provisional permits and change authorizations.** This process will remove the “provisional” status of these permits and change authorizations so that they transform into certificates of water right holding the same weight as an adjudicated water right.



Limited Standing: Only holders of water rights adjudicated in the final decree may submit petitions. It’s not another “bite at the apple” for objectors.



Narrow Objection Criteria: A valid petition must demonstrate that modification of a permit or change is necessary to protect the petitioner’s existing water rights and that the permit would have been denied or modified if the final decree had been available when it was issued. DNRC must consider whether, based on the final decree, legally available water existed at the time the provisional permit was issued.



Timebound process: The petition window will last just 180 days, and the bill contains timeframes for each step of the process to ensure efficiency.

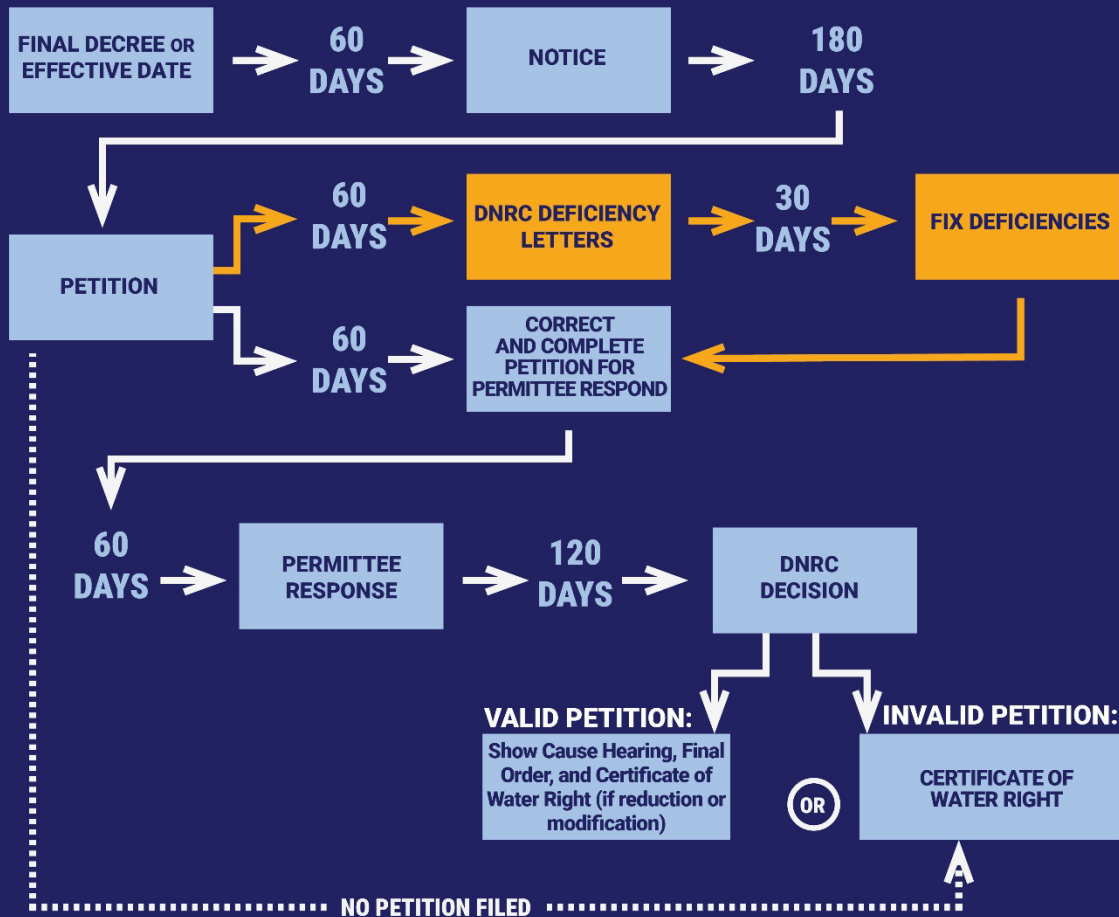
Certainty and finality for approximately:

12,000
PERMITS

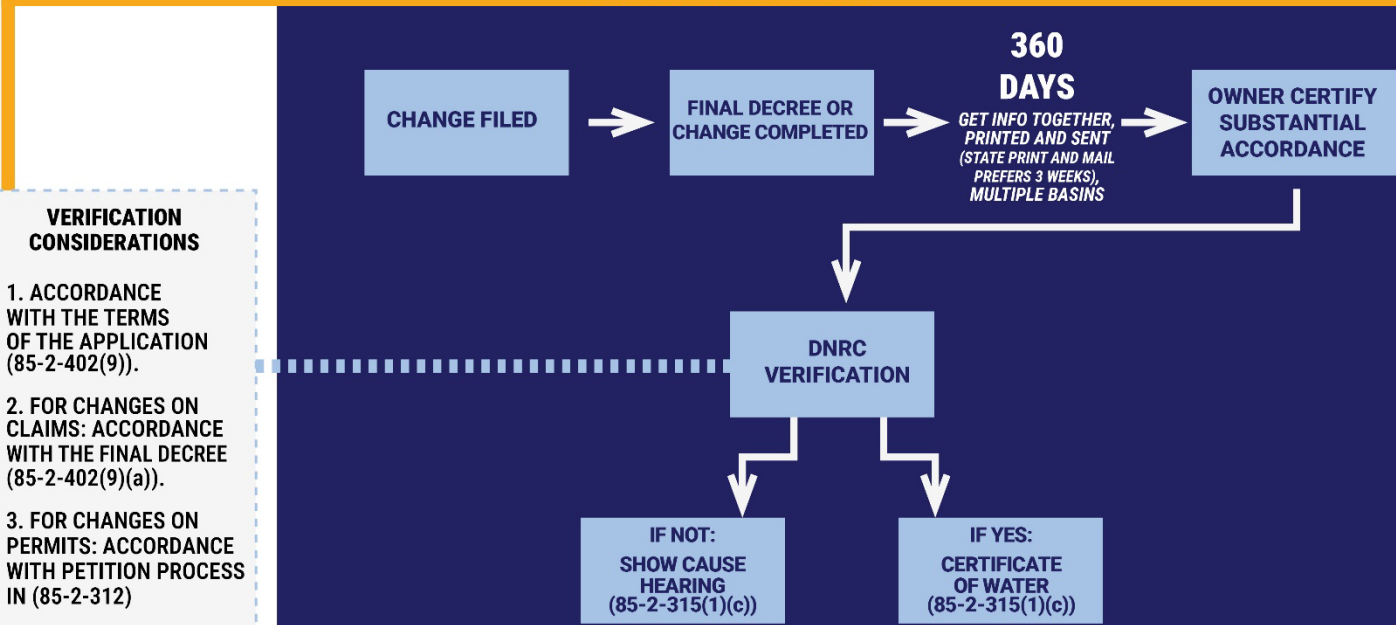


4,900
CHANGE
AUTHORIZATIONS

PROVISIONAL PERMITS



CHANGES



VERIFICATION CONSIDERATIONS

1. ACCORDANCE WITH THE TERMS OF THE APPLICATION (85-2-402(9)).
2. FOR CHANGES ON CLAIMS: ACCORDANCE WITH THE FINAL DECREE (85-2-402(9)(a)).
3. FOR CHANGES ON PERMITS: ACCORDANCE WITH PETITION PROCESS IN (85-2-312)