



SB 190: Waiver of Adverse Effect

*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.*

From October 1, 2017 to September 30, 2023, 85-2-311, MCA, contained a “Waiver of Adverse Effect” provision. The provision terminated due to a sunset provision. The Comprehensive Water Review Stakeholder Working Group unanimously voted to reinstate the provision because it can simplify the water rights permitting process in certain situations.

ADVERSE EFFECT ANALYSIS

The Department of Natural Resources and Conservation (DNRC) is required to ensure a proposed water permit or change will not cause harm to – or “**adversely affect**” – any other water right holders, regardless of whether those affected actually oppose the proposed water use. In all new water permit or change applications, the applicant must submit a **plan** addressing how they will ensure that there are no adverse effects to existing water rights holders.

WHAT DOES THIS BILL DO?

This bill allows applicants to seek a **waiver of adverse effect** from owner(s) of a water right(s) identified by DNRC as potentially impacted by the new or changed use. The water right owner could sign the waiver if they felt their water right would not be adversely affected by the new water use or change in use. Signing the waiver would be voluntary; water rights owners are not compelled to waive adverse effect in any way.

IMPACT OF WAIVER

For any water right for which a waiver is obtained:

1. The water right would be removed from consideration during DNRC’s adverse effect assessment; and
2. The applicant would not be required to address the water right in the plan that they submit to DNRC.

LIMITATIONS OF WAIVER

Obtaining a waiver would **not** relieve DNRC from conducting its legal availability assessment for permits. If water cannot be found legally available, DNRC cannot authorize the permit.

BENEFITS OF THIS BILL

This bill simplifies the permitting and change process while maintaining appropriate sideboards, striking a balance between finding creative solutions to pressing water challenges and ensuring adequate protection for existing water rights.