

DNRC Comprehensive Water Review

Outline of work products and recommendations

Final Decree Transition	Action Items	Page
Bill 1: Role of the Judiciary	Review by DNRC/GO	1
Bill 2: Provisional Permits	Review draft & discussion in July	29
Planning, Growth, and Exempt Wells		
Storage:		
Funding 1: New storage	Review draft & discussion in July	33
Funding 2: Funding package for existing storage	EPP process	<i>Forthcoming</i>
Mitigation & change process:		
Bill 3: Waiver of adverse effect	Review draft & discussion in July	34
Bill 4: Streamlined change process	Review draft & discussion in July	46
Public Water and Sewer:		
Funding 3: Funding package for incentivizing PWS	Kelly and Mark in August	<i>Forthcoming</i>
Public Water and Sewer:		
Bill 5: Agency coordination & notice of intent for exempt wells	Review draft & discussion in July	57
Bill 6: Exempt wells	Discussion of concepts	<i>Forthcoming</i>
Recommendations:		
Recommendation 1: Storage	Review draft & discussion in July	74
Recommendation 2: Mitigation	Review draft & discussion in July	75
Recommendation 3: Municipalities	Review draft & discussion in July	76
Recommendation 4: Notification/outreach plan for exempt wells	Review draft & discussion in July	77

BILL NO. _____

INTRODUCED BY _____

BY REQUEST OF _(Agency or Department)_____

A BILL FOR AN ACT ENTITLED: “AN ACT PROVIDING FOR THE CONTINUATION OF THE WATER DIVISIONS AND WATER JUDGES IN THE COMPREHENSIVE AND CENTRALIZED ADJUDICATION AND ADMINISTRATION OF WATER RIGHTS; REVISING THE POWERS, DUTIES, TERMS, DESIGNATION, APPOINTMENT, OPERATIONS, AND JURISDICTION OF THE WATER DIVISIONS; _____; _____; _____; _____; AMENDING SECTIONS; REPEALING SECTIONS; AND PROVIDING AN EFFECTIVE DATE.”

WHEREAS,

WHEREAS,

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-4-702, MCA, is amended to read:

2-4-702. (Temporary) Initiating judicial review of contested cases. (1) (a) Except as provided in 75-2-213 and 75-20-223, a person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final written decision in a contested case is entitled to judicial review under this chapter. This section does not limit use of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by statute.

(b) A party who proceeds before an agency under the terms of a particular statute may not be precluded from questioning the validity of that statute on judicial review, but the party may not raise any other question not raised before the agency unless it is shown to the satisfaction of the court that there was good cause for failure to raise the question before the agency.

(2) (a) Except as provided in 75-2-211, 75-2-213, and subsections (2)(c) and (2)(e) of this section, proceedings for review must be instituted by filing a petition in district court within 30 days after service of the final written decision of the agency or, if a rehearing is requested, within 30 days after the written decision is rendered. Except as otherwise provided by statute, subsection (2)(d), or subsection (2)(e), the petition must be filed in the district court for the county where the petitioner resides or has the petitioner's principal place of business or where the agency maintains its principal office. Copies of the petition must be promptly served upon the agency and all parties of record.

(b) The petition must include a concise statement of the facts upon which jurisdiction and venue are based, a statement of the manner in which the petitioner is aggrieved, and the ground or grounds specified

in 2-4-704(2) upon which the petitioner contends to be entitled to relief. The petition must demand the relief to which the petitioner believes the petitioner is entitled, and the demand for relief may be in the alternative.

(c) If a petition for review is filed pursuant to 33-16-1012(2)(c), the workers' compensation court, rather than the district court, has jurisdiction and the provisions of this part apply to the workers' compensation court in the same manner as the provisions of this part apply to the district court.

(d) If a petition for review is filed challenging a licensing or permitting decision made pursuant to Title 75 or Title 82, the petition for review must be filed in the county where the facility is located or proposed to be located or where the action is proposed to occur.

(e) (i) A party who is aggrieved by a final decision on an application for a permit or change in appropriation right filed under Title 85, chapter 2, part 3, may petition the district court or the water court for judicial review of the decision. If a petition for judicial review is filed in the water court, the water court rather than the district court has jurisdiction and the provisions of this part apply to the water court in the same manner as they apply to the district court. The time for filing a petition is the same as provided in subsection (2)(a).

(ii) If more than one party is aggrieved by a final decision on an application for a permit or change in appropriation right filed under Title 85, chapter 2, part 3, the district court where the appropriation right is located has jurisdiction. If more than one aggrieved party files a petition but no aggrieved party files a petition in the district court where the appropriation right is located, the first judicial district, Lewis and Clark County, has jurisdiction.

(iii) If a petition for judicial review is filed in the district court, the petition for review must be filed in the district court in the county where the appropriation right is located.

(3) Unless otherwise provided by statute, the filing of the petition may not stay enforcement of the agency's decision. The agency may grant or the reviewing court may order a stay upon terms that it considers proper, following notice to the affected parties and an opportunity for hearing. A stay may be issued without notice only if the provisions of 27-19-315 through 27-19-317 are met.

(4) Within 30 days after the service of the petition or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be required by the court to pay the additional costs. The court may require or permit subsequent corrections or additions to the record. (*Terminates September 30, 2025--sec. 6, Ch. 126, L. 2017.*)

2-4-702. *(Effective October 1, 2025)* **Initiating judicial review of contested cases.** (1) (a) Except as provided in 75-2-213 and 75-20-223, a person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final written decision in a contested case is entitled to judicial review under this chapter. This section does not limit use of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by statute.

(b) A party who proceeds before an agency under the terms of a particular statute may not be precluded from questioning the validity of that statute on judicial review, but the party may not raise any other question not raised before the agency unless it is shown to the satisfaction of the court that there was good cause for failure to raise the question before the agency.

(2) (a) Except as provided in 75-2-211, 75-2-213, and subsection (2)(c) of this section, proceedings for review must be instituted by filing a petition in district court within 30 days after service of the final written decision of the agency or, if a rehearing is requested, within 30 days after the written decision is rendered. Except as otherwise provided by statute or subsection (2)(d), the petition must be filed in the district court for the county where the petitioner resides or has the petitioner's principal place of business or where the agency maintains its principal office. Copies of the petition must be promptly served upon the agency and all parties of record.

(b) The petition must include a concise statement of the facts upon which jurisdiction and venue are based, a statement of the manner in which the petitioner is aggrieved, and the ground or grounds specified in 2-4-704(2) upon which the petitioner contends to be entitled to relief. The petition must demand the relief to which the petitioner believes the petitioner is entitled, and the demand for relief may be in the alternative.

(c) If a petition for review is filed pursuant to 33-16-1012(2)(c), the workers' compensation court, rather than the district court, has jurisdiction and the provisions of this part apply to the workers' compensation court in the same manner as the provisions of this part apply to the district court.

(d) If a petition for review is filed challenging a licensing or permitting decision made pursuant to Title 75 or Title 82, the petition for review must be filed in the county where the facility is located or proposed to be located or where the action is proposed to occur.

(e) (i) A party who is aggrieved by a final decision on an application for a permit or change in appropriation right filed under Title 85, chapter 2, part 3, may petition the water division court for judicial review of the decision. Time for filing a petition is the same as provided in subsection (2)(a).

(3) Unless otherwise provided by statute, the filing of the petition may not stay enforcement of the agency's decision. The agency may grant or the reviewing court may order a stay upon terms that it

considers proper, following notice to the affected parties and an opportunity for hearing. A stay may be issued without notice only if the provisions of 27-19-315 through 27-19-317 are met.

(4) Within 30 days after the service of the petition or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be required by the court to pay the additional costs. The court may require or permit subsequent corrections or additions to the record.

Section 2. Section 3-1-101, MCA, is amended to read:

3-1-101. The several courts of this state. The following are courts of justice of this state:

- (1) the court of impeachment, which is the senate;
- (2) the supreme court;
- (3) the district courts;
- (4) the water division court;
- ~~(4)~~ (5) the municipal courts;
- ~~(5)~~ (6) the justices' courts;
- ~~(6)~~ (7) the city courts and such other courts of limited jurisdiction as the legislature may establish in any incorporated city or town.

Section 3. Section 3-1-102, MCA, is amended to read:

3-1-102. Courts of record. The court of impeachment, the supreme court, the district courts, the water division court, the workers' compensation court, the municipal courts, the justices' courts of record, and the city courts of record are courts of record.

[DRAFTERS NOTE: NO AMENDMENTS TO SECTION 3-1-804 (SUBSTITUTION OF DISTRICT COURT JUDGES CONTEMPLATED. REMOVED FROM DRAFT AND PLACED IN ADDENDUM)]

Section 4. Section 3-1-901, MCA, is amended to read:

3-1-901. Judicial vacancy – notice. (1) (a) ~~Upon~~ On receiving notice from the chief justice of the supreme court, the governor shall appoint a candidate, as provided in this part, to fill any vacancy on the supreme court or the district court.

(b) The ~~governor~~ chief justice of the supreme court shall appoint a candidate to fill any term or vacancy for a ~~the water division judge~~ chief water judge or associate water judge ~~from the list of nominees provided to the governor by the chief justice of the supreme court pursuant to 3-7- 201 221.~~

(2) Within 10 days of the date of receipt by the governor of the notice from the chief justice of the supreme court that a vacancy has occurred or the effective date of the judicial resignation has been announced, the governor shall notify the public, including media outlets with general statewide circulation and other appropriate sources, that a vacancy has been announced, including the deadline within which applications must be received.

Section 5. Section 3-1-904, MCA, is amended to read:

3-1-904. Public comment. (1) The governor shall establish a reasonable period for reviewing applications and interviewing applicants that provides at least 30 days for public comment concerning applicants.

(2) Each applicant who has the qualifications set forth by law for holding judicial office and who receives a letter of support from at least three adult Montana residents by the close of the public comment period provided for in subsection (1) must be considered a nominee for the position.

(3) The total time from receipt of notice of a vacancy until appointment may not exceed 100 days.

(4) The application, public comment, and any related documents are open to the public except when the demands of individual privacy clearly exceed the merits of public disclosure.

(5) The governor shall provide at least 30 days for public comment concerning the nominees submitted by the chief justice of the supreme court for water division judge pursuant to 3-7-201.

Section 6. Section 3-1-905, MCA, is amended to read:

3-1-905. Appointments. (1) The governor, ~~or the chief justice of the supreme court for the office described in 3-7-221,~~ shall make an appointment within 30 days of the close of the public comment period from the list of applicants, or list of nominees submitted by the chief justice of the Supreme Court for water division judge.

(2) For the purposes of Article VII, section 8, of the Montana constitution, the governor must be construed to receive the names of the nominees at the close of the public comment period provided for in 3-1-904.

(3) If the governor fails to appoint within 30 days of the close of the public comment period provided for in subsection (1), the chief justice shall make the appointment from the same list of applicants, or same list of nominees for water division judge, within 30 days of the governor's failure to appoint.

NEW SECTION. Section 7. Office of the clerk of the water division court - operations. (1) There is established a single office of the clerk of the water division court that shall maintain all records, accept all filings, and conduct other clerical duties in matters before the water division court.

(2) The office of the clerk of the water division court is comprised of a water division court administrator and all personnel necessary for the water division court administrator to perform their duties.

(3) The water division court administrator shall perform duties assigned by the chief judge of the water divisions court. As long as they are not inconsistent with this Chapter, the duties of the water division court administrator shall include those duties set forth in Title 3, Chapter 5, Part 5.

(4) Any reference to the “clerk” of the water division judge in Title 85, chapter 2 refers to the office of the water division court and its administrator.

Section 8. Section 3-7-101, MCA, is amended to read:

3-7-101. Water divisions – water division court. (1) To adjudicate existing water rights, ~~and~~ ~~to~~ conduct hearings in cases certified under 85-2-309, administer the final decrees of all water rights, resolve water rights and water use controversies or disputes, and supervise the judicial administration and enforcement of water rights and water uses, water divisions are established as defined in 3-7-102. A water division shall be presided over by a water judge.

- (a) Each water division shall be presided over by a water division judge to carry out the duties set forth in [NEW SECTION 17]. A water division judge may preside over one or more divisions.
- (b) A water division judge shall adjudicate existing water rights pursuant to Title 85, Chapter 2, Part 2.

- (c) There shall be a chief judge of the water division court selected from among the sitting water division judges pursuant to 3-7-201.

Section 9. Section 3-7-103, MCA, is amended to read:

3-7-103. Promulgation of rules and prescription of forms -- advisory committee. (1) As soon as practicable the Montana supreme court may promulgate special rules of practice and procedure and shall prescribe forms for use in connection with this chapter and Title 85, chapter 2, parts 2 and 7, in consultation with the chief judge of the water division court judges and the department of natural resources and conservation.

(2) (a) The chief judge of the water judge division court shall appoint a water adjudication advisory committee to provide recommendations to the water division court, the Montana supreme court, the department of natural resources and conservation, and the legislature on methods to improve and expedite the water adjudication process.

(b) The committee consists of three nongovernmental attorneys who practice before the water division court, one district court judge, one public member, and three water users who have filed statements of claim with the department of natural resources and conservation under this chapter.

(c) The chief judge of the water division court judge or the judge's designee shall serve as an ex officio member of the committee. The Montana supreme court may appoint the attorney general or the attorney general's designee, a representative from the department of natural resources and conservation, and a representative of the United States government as ex officio members of the committee.

(d) The committee members shall serve at the pleasure of the chief judge of the water division court court and shall serve without compensation.

(e) The committee shall file a report with the Montana supreme court by October 1, 1996, and as often as determined by the Montana supreme court.

NEW SECTION. Section 10. Venue for water rights determinations. All matters under Title 3, Chapter 7, Part 2 must be brought before or immediately transferred to the water division judge in the appropriate water division. Any proceedings under Title 3, Chapter 7, Part 2 must be conducted within the water division or county in which the controversy arises unless otherwise mutually agreed by the parties.

Section 11. Section 3-7-201, MCA, is amended to read:

3-7-201. Designation Appointment of water judges and chief judge of the water division court - qualifications. (1) ~~A water judge must be designated for each water division by a majority vote of a committee composed of the district court judge from each single judge judicial district and the chief district judge from each multi judge judicial district, wholly or partly within the division. Except as provided in subsection (2), a water judge must be a district court judge or retired district court judge of a judicial district wholly or partly within the water division. The water division court consists of at least two water division judges, who shall be appointed by the governor, as provided in Title 3, Chapter 1, Part 9, from a list of no more than three eligible nominees for each vacancy submitted to the governor by the chief justice of the supreme court within 90 days of the expiration of a term or in the case of a vacancy of the seat described in 3-7-203.~~

(a) To be eligible for the office of water division judge, a person shall have the qualifications for district court or supreme court judges set forth in Article VII, section 9, of the Montana Constitution.

(b) In reviewing reappointments for water division judges, the chief justice of the supreme court shall:

(i) cause the court administrator to solicit information concerning the judicial performance of the water division judge, from parties and attorneys that have appeared before the water division judge during the previous term;

(ii) consider information about the water division judge that is solicited pursuant to subsection (1)(b)(i)

(iii) consider information about the water division judge that is on file with the judicial standards commission pursuant to Title 3, Chapter 1, Part 11; and

(iv) consider the judge's past performance as reported pursuant to 3-1-716.

(2) The chief justice of the supreme court shall select one water division judge to serve as the chief judge of the water division court for a term of four years. A water division judge may serve consecutive terms as chief judge of the water division court.

(a) The chief judge of the water division court shall serve as the chief judge for all matters regarding the efficient management of the water division court's business in cooperation with other water division judges and the water division court administrator including:

(i) assign water division court personnel to duties as needed; and

(ii) prepare water division court budget requests to the supreme court; and

_____ (iii) oversee the office of the water division court, including supervision of the water division court administrator.

(2)-(3) A currently sitting or retired district court judge or a currently sitting or retired water division judge, may sit as a substitute judge in ~~more than one~~ any division if requested by the chief justice of the supreme court or the water division judge of the division in which the substitute judge is requested to sit. A substitute judge has the same powers as a water division judge appointed pursuant to this section and [NEW SECTION 17].

(3) A water judge, when presiding over a water division, presides as district court judge in and for each judicial district wholly or partly within the water division.

(4) Except for adjudication actions under Title 85, Chapter 2, Parts 2 and 7, substitution of a water division judge is allowed in the same manner as civil district court actions pursuant to 3-1-804, except:

(a) all other water division judges must be called as a substitute judge before a non-water division judge is called, except in the instance of a motion to substitute a district court judge.

(b) A motion to substitute a district court judge may be granted by the water division judge if

(i) good cause exists for the substitution of the district court judge,

(ii) there will be no undue delay or prejudice to the other parties involved in the water controversy, and

_____ (iii) the substitution is to a district court judge sitting wholly or partially within a judicial district where the water controversy arises.

(c) if a district court judge is substituted for a water division judge, the district court judge is deemed to be presiding as a water division judge.

Section 12. Section 3-7-202, MCA, is amended to read:

3-7-202. Term of office. The term of office for a water division judge ~~is from the date of initial appointment as provided in 3-7-201 to June 30, 1985. After June 30, 1985, the term of office of a water judge is 4~~ 6 years and begins on the date of initial appointment as provided in 3-7-201, ~~subject to continuation of the water divisions by the legislature.~~

Section 13. Section 3-7-203, MCA, is amended to read:

3-7-203. Vacancies. If a vacancy in the office of water division judge occurs, it must be filled in the manner provided in 3-7-201 ~~for the initial designation of a water judge.~~ A vacancy is created when

a water division judge dies, resigns, retires, ~~is not elected to a subsequent term,~~ forfeits the judicial position, is removed, or is otherwise unable to complete the term as a water division judge.

Section 14. Section 3-7-204, MCA, is amended to read:

3-7-204. Supervision and administration by supreme court. (1) The Montana supreme court shall supervise the activities of the water division judges, water masters, and associated water division court personnel in implementing this chapter and Title 85, ~~chapter 2, part 2.~~

(2) The supreme court shall pay the salaries and expenses of the water division judges and the salaries and expenses of the water judges' staffs and the salaries and expenses of the water masters and the water masters' staffs, from appropriations made for that purpose associated water division court personnel. "Salaries and expenses" as used in this section include but are not limited to the salaries and expenses of personnel, the cost of office equipment and office space, and other necessary expenses that may be incurred in the administration of this chapter and Title 85, ~~chapter 2, part 2.~~

(3) A water division judge must receive the same salary and expense allowance as provided for a district court judge pursuant to 3-5-211.

(4) The office of the water division court, as described in [NEW SECTION 7], must be at a location designated by the chief justice of the Montana supreme court.

(5) The Montana supreme court shall provide in its budget for the salary, expense, and office and staff requirements of the water division judges. Money may be appropriated by the legislature from the general fund for these purposes.

Section 15. Section 3-7-211, MCA, is amended to read:

3-7-211. Appointment of water commissioners. Except as provided in 85-20-1902, the ~~district~~ water division court having jurisdiction over the hydrologically interrelated portion of a water division, as described in 85-2-231(3), in which the controversy arises may appoint and supervise a water commissioner as provided for in Title 85, chapter 5.

Section 16. Section 3-7-212, MCA, is amended to read:

3-7-212. Enforcement of decrees. The ~~district court~~ water division court ~~having~~ has jurisdiction ~~may~~ to enforce the provisions of a final decree entered under 85-2-234. In the absence of any

final decree having been issued, the ~~district court~~ water division court ~~having~~ has jurisdiction ~~may to~~ enforce the provisions of a temporary preliminary decree, preliminary decree, or supplemental preliminary decree entered under 85-2-231, as modified after objections and hearings.

NEW SECTION. Section 17. Duties and jurisdiction of water division judges. (1) With regard to consideration of a matter within the water division judge's jurisdiction, a water division judge has the same powers as a district court judge. A water division judge may issue orders, on the motion of an interested party or on the judge's own motion, that may reasonably be required to allow the judge to fulfill the judge's responsibilities, including but not limited to requiring joinder of persons not parties to the administrative hearing being conducted by the department pursuant to 85-2-309 or 85-2-402 as considered necessary to resolve any factual or legal issue certified pursuant to 85-2-309(2).

(2) A water division judge shall:

(a) administer the adjudication of existing water rights by:

(i) coordinate with the department of natural resources and conservation in compiling information submitted on water claim forms under Title 85, chapter 2, part 2, to assure that the information is expeditiously and properly compiled and transferred to the water division judge in each water division;

(ii) ensure that adjudication proceedings in each-water division move without unreasonable delay to enter the required preliminary decree; and

(iii) ensure that any contested or conflicting claims are tried and adjudicated as expeditiously as possible.

(3) A water division judge has jurisdiction over all matters relating to the adjudication, distribution, and administration of existing water rights within the divisions to which they are assigned. The water division judge has the jurisdiction to interpret, administer, enforce, and supervise the distribution of water rights pursuant to the terms of 3-7-212, 85-2-406, Title 85, Chapter 3, Title 85, Chapter 5, and Title 85, Chapter 20.

[DRAFTER'S NOTE: With collapsing of two types of judges and addition of [New Section 17], current 3-7-223 would be repealed. I have moved to the addendum for clarity of this draft].

Section 18. Section 3-7-301, MCA, is amended to read:

3-7-301. Appointment of water masters – disqualification -- removal. (1) The chief judge of the water division court, or the water judge in each water division may appoint one or more water masters: to expedite the adjudication of water rights in proceedings initiated and held pursuant to Title 85, Chapter 2, Part 2.

~~(2)~~ A water master may be appointed after July 1, 1980, and must be appointed on or before July 1, 1982.

~~(3)~~ (2) In appointing a water master, the chief judge of the water division shall consider a potential master's experience with water law, water use, and water rights.

(3) A water master shall take the oath required of judges and follow the Montana code of judicial conduct.

(4) An appointed water master is an employee of the water division court under 3-5-901.

(5) A water master is subject to disqualification from proceeding on a matter on the same grounds as any other judicial officer. On disqualification of a water master, the chief water division judge shall either refer the matter to another water master or move the case back to the water division judge's docket for further proceedings.

~~(4)~~ (6) A water master shall serve at the pleasure of the chief judge of the water division court and may be removed by the chief judge of the water division court.

~~(5)~~ (7) Pursuant to the limitations of this section, a water master may serve in any water division and may be moved among the water divisions at the discretion of the chief judge of the water division court.

Section 19. Section 3-7-311, MCA, is amended to read:

3-7-311. Duties of water masters. (1) The water master has the general powers given to a master by Rule 53(c), M.R.Civ.P.

(2) Within a reasonable time after June 30, 1983, the water master shall issue a report to the chief judge of the water division court meeting the requirements for the preliminary decree as specified in 85-2-231.

(3) After a water division judge issues a preliminary decree, the water master shall assist the judge in the performance of the water division's further duties.

~~(4) A water master may be appointed by a district court to serve as a special master to a district court for actions brought pursuant to 85-2-114(1) or (3) or 85-5-301 if the appointment is approved by the chief water judge.~~

[DRAFTER’S NOTE: With collapse of 2 types of judges, no amendments needed to 3-7-401 to 3-7-404. Removed from this draft and placed in addendum].

Section 20. Section 3-7-501, MCA, is amended to read:

3-7-501. Jurisdiction. ~~(1) The jurisdiction of each judicial district concerning the determination and interpretation of cases certified to the court under 85-2-309 or of existing water rights is exercised exclusively by it through the water division or water divisions that contain the judicial district wholly or partly. The water division court has the exclusive jurisdiction to preside over matters assigned to the water division court pursuant to [NEW SECTION 17].~~

~~(2) A water division judge may not preside over matters concerning the determination and interpretation of cases certified to the court under 85-2-309 or of existing water rights beyond the boundaries specified in 3-7-102 for the judge's division except as provided in 3-7-201.~~

(3) The water division judge for each division shall exercise jurisdiction over all matters concerning cases certified to the court under 85-2-309 or concerning the determination and interpretation of existing water rights within the judge’s division as specified in 3-7-102 that are considered filed in or transferred to a judicial district wholly or partly within the division.

(4) The determination and interpretation of existing water rights includes, without limitation, the adjudication of total or partial abandonment of existing water rights occurring at any time before the entry of the final decree.

Section 21. Section 3-7-502, MCA, is amended to read:

3-7-502. Jurisdictional disputes. Whenever a question arises concerning which water division judge shall preside over adjudication of a matter ~~concerning a case certified to the court under 85-2-309 or the determination or interpretation of existing water rights~~ that could be heard in more than one water division, the question shall be settled by the water division judges involved.

Section 22. Section 25-2-123, MCA, is amended to read:

25-2-123. Real property. (1) The proper place of trial for the following actions is the county in which the subject of the action or some part thereof is situated:

(a) for the recovery of real property or of an estate or an interest therein or for the determination, in any form, of such right or interest;

(b) for injuries to real property;

(c) for the partition of real property;

(d) for the foreclosure of all liens and mortgages on real property.

(2) Where the real property is situated partly in one county and partly in another, the plaintiff may select either of the counties and the county so selected is the proper county for the trial of such action.

(3) The proper place of trial for all actions for the recovery of the possession of, quieting the title to, or the enforcement of liens upon real property is the county in which the real property, or any part thereof, affected by such action or actions is situated.

(4) Pursuant to [NEW SECTION 11], the proper place for trial for all actions involving disputes or controversies involving water rights pursuant to the terms of 3-7-212, Title 85, Chapter 2, Title 85, Chapter 3, Title 85, Chapter 5, and Title 85, Chapter 20 is the water division or county in which the controversy arises unless otherwise mutually agreed by the parties.

Section 23. Section 85-2-102, MCA, is amended to read:

85-2-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Appropriate" or "appropriation" means:

(a) to divert, impound, or withdraw, including by stock for stock water, a quantity of water for a beneficial use;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316;

(c) in the case of the department of fish, wildlife, and parks, to change an appropriation right to instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource in accordance with 85-2-436;

(d) in the case of the United States department of agriculture, forest service:

(i) instream flows and in situ use of water created in 85-20-1401, Article V; or

(ii) to change an appropriation right to divert or withdraw water under subsection (1)(a) to instream flow to protect, maintain, or enhance streamflows in accordance with 85-2-320;

(e) temporary changes or leases for instream flow to maintain or enhance instream flow to benefit the fishery resource in accordance with 85-2-408;

(f) a use of water for aquifer recharge or mitigation; or

(g) a use of water for an aquifer storage and recovery project as provided in 85-2-368.

(2) "Appropriation right" has the same meaning as "water right" as defined in this section.

(3) "Aquifer recharge" means either the controlled subsurface addition of water directly to the aquifer or controlled application of water to the ground surface for the purpose of replenishing the aquifer to offset adverse effects resulting from net depletion of surface water.

(4) "Aquifer storage and recovery project" means a project involving the use of an aquifer to temporarily store water through various means, including but not limited to injection, surface spreading and infiltration, drain fields, or another department-approved method. The stored water may be either pumped from the injection well or other wells for beneficial use or allowed to naturally drain away for a beneficial use.

(5) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural, stock water, domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141;

(c) a use of water by the department of fish, wildlife, and parks through a change in an appropriation right for instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource authorized under 85-2-436;

(d) a use of water through a temporary change in appropriation right or lease to enhance instream flow to benefit the fishery resource in accordance with 85-2-408;

(e) a use of water for aquifer recharge or mitigation; or

(f) a use of water for an aquifer storage and recovery project as provided in 85-2-368.

(6) "Certificate" means a certificate of water right issued by the department.

(7) (a) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(b) The term does not include a change in water use related to the method of irrigation.

(8) "Commission" means the fish and wildlife commission provided for in 2-15-3402.

(9) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information for the department to begin evaluating the information.

(10) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(11) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(12) "Developed spring" means any point where ground water emerges naturally, that has subsequently been physically altered, and from which ground water flows under natural pressures or is artificially withdrawn.

(13) "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.

(14) "Ground water" means any water that is beneath the ground surface.

(15) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

(16) "Mitigation" means the reallocation of surface water or ground water through a change in appropriation right or other means that does not result in surface water being introduced into an aquifer through aquifer recharge to offset adverse effects resulting from net depletion of surface water.

(17) "Municipality" means an incorporated city or town organized and incorporated under Title 7, chapter 2.

(18) (a) "National forest system lands" means all lands within Montana that are owned by the United States and administered by the secretary of agriculture through the forest service.

(b) The term does not include any lands within the exterior boundaries of national forest system units that are not owned by the United States and administered by the secretary of agriculture through the forest service.

(19) "Nonconsumptive use" means a beneficial use of water that does not cause a reduction in the source of supply and in which substantially all of the water returns without delay to the source of supply, causing little or no disruption in stream conditions.

(20) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(21) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.

(22) (a) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water.

(b) The term does not mean a private corporation, association, or group.

(23) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

(24) "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.

(25) "Stream depletion zone" means an area where hydrogeologic modeling concludes that as a result of a ground water withdrawal, the surface water would be depleted by a rate equal to at least 30% of the ground water withdrawn within 30 days after the first day a well or developed spring is pumped at a rate of 35 gallons a minute.

(26) "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

(27) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(28) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

~~(29)~~ (29) “Montana water court” or “water court” means the water division court as provided for in Title 3, chapter 1 and chapter 7.

~~(29)~~ (30) "Water division" means a drainage basin as defined in 3-7-102.

~~(30)~~ (31) "Water judge" means a water division judge as provided for in Title 3, chapter 7.

~~(31)~~ (32) "Water master" means a master as provided for in Title 3, chapter 7.

~~(32)~~ (33) "Water right" means the right to appropriate water pursuant to an existing right, a permit, a certificate of water right, a state water reservation, or a compact.

~~(33)~~ (34) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

~~(34)~~ (35) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.

Section 24. Section 85-2-112, MCA is amended to read:

85-2-112. Department duties. The department shall:

(1) enforce and administer this chapter and rules adopted under 85-2-113, subject to the powers and duties of the supreme court under 3-7-204;

(2) prescribe procedures, forms, and requirements for applications, permits, certificates, claims of existing rights, and proceedings under this chapter and prescribe the information to be contained in any application, claim of existing right, or other document to be filed with the department under this chapter not inconsistent with the requirements of this chapter;

(3) establish and keep in its Helena office a centralized record system of all existing rights and a public record of permits, certificates, claims of existing rights, applications, and other documents filed in its office under this chapter;

(4) cooperate with, assist, advise, and coordinate plans and activities with the federal, state, and local agencies in matters relating to this chapter;

(5) upon request by any person, cooperate with, assist, and advise that person in matters pertaining to measuring water or filing claims of existing rights with ~~a district~~ the water division court under this chapter;

(6) adopt rules necessary to reject, modify, or condition permit applications in highly appropriated basins or subbasins as provided in 85-2-319.

Section 25. Section 85-2-114, MCA, is amended to read:

85-2-114. Judicial enforcement. (1) If the department ascertains, by a means reasonably considered sufficient by it, that a person is wasting water, using water unlawfully, preventing water from moving to another person having a prior right to use the water, ~~or~~ violating a provision of this chapter, **or that a petition for a water commissioner has been filed in the district court implicating matters of river basin-wide or statewide importance.** it may petition the ~~district court supervising the distribution of water among appropriators from the source~~ water division court to:

(a) regulate the controlling works of an appropriation as may be necessary to prevent the wasting or unlawful use of water or to secure water to a person having a prior right to its use;

(b) order the person wasting, unlawfully using, or interfering with another's rightful use of the water to cease and desist from doing so and to take steps that may be necessary to remedy the waste, unlawful use, or interference; or

(c) issue a temporary, preliminary, or permanent injunction to prevent a violation of this chapter.

Notwithstanding the provisions of Title 27, chapter 19, part 3, a temporary restraining order must be granted if it clearly appears from the specific facts shown by affidavit or by the verified complaint that a provision of this chapter is being violated.

(d) petition the water division court for the appointment of a water commissioner under Title 85, chapter 5. If such a petition has already been filed in the district court, the department shall petition for the removal of the action to the water division court.

(2) Upon the issuance of an order or injunction, the department may attach to the controlling works a written notice, properly dated and signed, setting forth the fact that the controlling works have been properly regulated by it. The notice constitutes legal notice to all persons interested in the appropriation or distribution of the water.

(3) The department may also direct its own attorney or request the attorney general or county attorney to bring suit to enjoin the waste, unlawful use, interference, or violation.

(4) The county attorney or the attorney general may bring suit to enjoin the waste, unlawful use, interference, or violation or bring an action under 85-2-122(1) without being requested to do so by the department.

(5) A county attorney who takes action pursuant to subsection (3) or (4) may request assistance from the attorney general.

(6) When enforcing the provisions of this section, the department, the county attorney, and the attorney general shall give priority to protecting the water rights of a prior appropriator under an existing water right, a certificate, a permit, or a state water reservation.

(7) After considering the provisions of subsection (6), the department may attempt to obtain voluntary compliance through warning, conference, or any other appropriate means before petitioning the district court under subsection (1). An attempt to obtain voluntary compliance under this subsection must extend over a period of at least 7 days and may not exceed 30 working days.

(8) Pursuant to 85-20-1902, the provisions of this section do not apply within the exterior boundaries of the Flathead Indian reservation.

(9) The provisions of this section do not limit a water right owner from seeking relief, including injunctive relief, in district court under Title 27, chapter 19, or this chapter

Section 26. Section 85-2-122, MCA, is amended to read:

85-2-122. Penalties. (1) Except as provided in 85-2-410(6), a person who violates or refuses or neglects to comply with the provisions of 85-2-114, any order of the department, or any rule of the department is subject to a civil penalty not to exceed \$1,000 per violation. Each day of violation constitutes a separate violation.

(2) Except as provided in subsection (3), fines collected by the department or ~~a district court~~ the water division court under subsection (1) must be deposited in the account established in 85-2-318 for use by the department in the enforcement of 85-2-114.

(3) If a fine is collected by an independent action brought by:

(a) the county attorney, the fine must be deposited in the general fund of the county; or

(b) the county attorney with assistance from the attorney general or by the attorney general, the fine must be deposited in the water right enforcement account created in 44-4-1101 and must be used to enforce the provisions of 85-2-114.

Section 27. Section 85-2-123, MCA, is amended to read:

85-2-123. Deposit of fees and penalties. Except as provided in 85-2-122 and 85-2-124, all fees and penalties collected under this chapter must be deposited in the water right appropriation account established in 85-2-318. ~~Except for fines collected by a district court under 85-2-122, all penalties or fines~~

~~imposed by any court other than a justice's court for a violation of this chapter must be deposited in the general fund of the county where the court presides and must be disposed of in the same manner as any other penalty or fine.~~

Section 28. Section 85-2-125, MCA, is amended to read:

85-2-125. Recovery of costs and attorney fees by prevailing party. (1) If a final decision of the department on an application for a permit or a change in appropriation right is appealed to ~~district~~ water division court, the ~~district~~ water division court may award the prevailing party reasonable costs and attorney fees.

(2) The party obtaining injunctive relief in an action to enforce a water right must be awarded reasonable costs and attorney fees. For the purposes of this section, "enforce a water right" means an action by a party with a water right to enjoin the use of water by a person that does not have a water right.

Section 29. Section 85-2-309, MCA, is amended to read:

85-2-309. Hearings on objections -- jurisdiction. (1) If the department determines that an objection to an application for a permit under 85-2-311 or change in appropriation right under 85-2-402 states a valid objection, it shall hold a contested case hearing, pursuant to Title 2, chapter 4, part 6, on the objection within 90 days from the date set by the department for the filing of objections after serving notice of the hearing by first-class mail upon the applicant and the objector, unless the department certifies an issue to the ~~district~~ water division court for determination by a water division judge under subsection (2). The department may consolidate hearings if more than one objection is filed to an application. The department may extend the 90-day deadline for good cause shown or upon request of the applicant and all objectors. The department shall file in its records proof of the service by affidavit of the department.

(2) (a) At any time prior to commencement or before the conclusion of a hearing as provided in subsection (1), the department may in its discretion certify to the ~~district~~ water division court all factual and legal issues involving the adjudication or determination of the water rights at issue in the hearing, including but not limited to issues of abandonment, quantification, or relative priority dates. Certified controversies must be given priority by a water division judge over all other adjudication matters.

(b) If the department fails to certify an issue as provided in this section after a timely request by a party to the hearing, the department shall include its denial to certify as part of the record of the hearing.

(c) Upon determination of the issues certified to it by the department, the water division court shall remand the matter to the department for further processing of the application under this chapter.

(3) Subsection (2) does not apply in the case of a matter considered at a hearing under this section pursuant to 85-2-316 or 85-2-322.

Section 30. Section 85-2-405, MCA, is amended to read:

85-2-405. Procedure for declaring appropriation rights abandoned. (1) When the department has reason to believe that an appropriator may have abandoned an appropriation right under **85-2-404** or when another appropriator in the opinion of the department files a valid claim that the appropriator has been or will be injured by the resumption of use of an appropriation right alleged to have been abandoned, the department shall petition the ~~district~~ water division court that determined the existing rights in the source of the appropriation in question to hold a hearing to determine whether the appropriation right has been abandoned. Proceedings under this section must be conducted in accordance with the Montana Rules of Civil Procedure, and appeal must be taken in accordance with the Montana Rules of Appellate Procedure.

(2) At the hearing, the burden of proof is on the department, which shall establish by a preponderance of the evidence that the appropriation has been abandoned under **85-2-404**.

(3) The determination of the court must be appended to the final decree. The department shall keep a copy of the determination in its office in Helena.

[Start at Water Division Court] **Section 31.** Section 85-2-406, MCA, is amended to read:

85-2-406. ~~District court~~ Supervision of water distribution. (1) The ~~district~~ water division court shall supervise the distribution of water among all appropriators. This supervisory authority includes the supervision of all water commissioners appointed prior or subsequent to July 1, 1973. The supervision must be governed by the principle that first in time is first in right.

(2) (a) A district court may order the distribution of water pursuant to a district court decree entered prior to July 1, 1973, until an enforceable decree is entered under part 2 of this chapter or the matter has been adjudicated under the procedure set forth in subsection (2)(b).

(b) When a water distribution controversy arises upon a source of water in which not all existing rights have been conclusively determined according to part 2 of this chapter, any party to the controversy may petition the ~~district~~ water division court to ~~certify the matter to the chief water judge of the water~~

~~division. If a certification request is made, the district court shall certify to the chief water judge the for a determination of~~ determine the existing rights that are involved in the controversy according to part 2 of this chapter. The water division ~~district~~ court from which relief is sought shall retain exclusive jurisdiction to grant injunctive or other relief that is necessary and appropriate pending adjudication of the existing water rights ~~certified to the water judge. Certified controversies~~ Such petitions must be given priority over all other adjudication matters. After determination of the petitioned matters ~~certified~~, the water judge shall issue ~~return the decision to the district court with~~ one or more a tabulations or lists of the existing rights and their relative priorities.

(3) A controversy between appropriators from a source that has been the subject of a final decree under part 2 of this chapter must be settled by the ~~district~~ water division court. The order of the water division ~~district~~ court settling the controversy may not alter the existing rights and priorities established in the final decree except to the extent the court alters rights based upon abandonment, waste, or illegal enlargement or change of right. In cases involving permits issued by the department, the court may not amend the respective rights established in the permits or alter any terms of the permits unless the permits are inconsistent or interfere with rights and priorities established in the final decree. The order settling the controversy may amend or supplement ~~must be appended to~~ the final decree, and a copy of the order and modified final decree must be filed with the department. The department must be served with process in any proceeding under this subsection, and the department may, in its discretion, intervene in the proceeding.

(4) A temporary preliminary decree or portion thereof, or a preliminary decree or portion thereof, as modified after objections and hearings is enforceable and administrable according to its terms. If an action to enforce a temporary preliminary decree or portion thereof, or a preliminary decree or portion thereof, is commenced, the ~~department water division judge~~ shall, upon referral from the ~~district water division~~ court establish, ~~in a form determined to be appropriate by the water judge~~, one or more tabulations or lists of all ~~existing water~~ rights and their relative priorities within the enforcement area defined in the petition. In cases involving permits issued by the department, the court may not amend the respective rights established in the permits or alter any terms of the permits. When an action is brought under this subsection, the court judge may, upon motion of a party to the action or sua sponte, order the department to provide technical assistance to accurately define the enforcement area set forth in the petition.

(5) Upon a determination that a petition filed under the subsections (2), (3), or (4) is sufficient, including a clearly defined enforcement area, the court shall issue an order requiring service of the petition on all water right owners within the enforcement area and the department. The order must set a time and place by which any interested party may show cause why the petition should not be granted. The

provisions of Title 25, chapter 3, parts 2 and 3, and Rules 4 and 12(a), M.R.Civ.P. are applicable to actions brought under subsections (2), (3), or (4), so long as they are not in conflict with this section.

~~(5)~~(6) A person whose existing rights and priorities are determined in a temporary preliminary decree or preliminary decree or a person exercising a suspension under 85-2-217 and part 7 of this chapter may appeal a determination made pursuant to subsection (2).

[Start at the State District Court Judge] Section 31. Section 85-2-406, MCA, is amended to read:

85-2-406. ~~District court~~ Supervision of water distribution. (1) ~~The district court shall~~ Except as set forth in subsection (7), a district court judge shall appoint and supervise ~~the distribution of water among all appropriators, and the district court judge is deemed to be presiding as a water division judge.~~ This supervisory authority includes the supervision of all water commissioners appointed prior or subsequent to July 1, 1973, and in such actions the district court judge shall be deemed to be presiding as a water division judge. The supervision must be governed by the principle that first in time is first in right.

(2) (a) A district court may order the distribution of water pursuant to a district court decree entered prior to July 1, 1973, until an enforceable decree is entered under part 2 of this chapter or the matter has been adjudicated under the procedure set forth in subsection (2)(b).

(b) When a water distribution controversy arises upon a source of water in which not all existing rights have been conclusively determined according to part 2 of this chapter, any party to the controversy may petition the district court judge to certify the matter to the chief ~~water~~ judge of the water division. If a certification request is made, the district court judge shall certify to the chief water judge of the water division the ~~determination~~ adjudication of the existing rights that are involved in the controversy according to part 2 of this chapter. The district court judge shall retain ~~exclusive~~ jurisdiction to grant injunctive or other relief that is necessary and appropriate pending adjudication of the existing water rights certified to the chief water judge. Certified controversies must be given priority over all other adjudication matters. After determination of the matters certified, the chief water judge shall return the decision to the district court judge with one or more ~~a~~ tabulations or lists of the existing rights and their relative priorities.

(3) A controversy between appropriators from a source that has been the subject of a final decree under part 2 of this chapter must be settled by the ~~district~~ water division court. The order of the ~~district~~ water division court settling the controversy may not alter the existing rights and priorities established in the final decree except to the extent the court alters rights based upon abandonment, waste, or illegal enlargement or change of right. In cases involving permits issued by the department, the court may not amend the respective rights established in the permits or alter any terms of the permits unless the permits

are inconsistent or interfere with rights and priorities established in the final decree. The order settling the controversy may amend or supplement ~~must be appended to~~ the final decree, and a copy of the order and modified final decree must be filed with the department. The department must be served with process in any proceeding under this subsection, and the department may, in its discretion, intervene in the proceeding.

(4) A temporary preliminary decree or portion thereof, or a preliminary decree or portion thereof, as modified after objections and hearings is enforceable and administrable according to its terms. If an action to enforce a temporary preliminary decree or portion thereof, or a preliminary decree or portion thereof, is commenced, the ~~department-water division judge~~ shall, upon referral from the district court judge establish, ~~in a form determined to be appropriate by the water judge~~, one or more tabulations or lists of all ~~existing water~~ rights and their relative priorities within the enforcement area defined in the petition. In cases involving permits issued by the department, the court may not amend the respective rights established in the permits or alter any terms of the permits. When an action is brought under this subsection, the district court judge may, upon motion of a party to the action or sua sponte, order the department to provide technical assistance to accurately define the enforcement area set forth in the petition.

(5) Upon a determination that a petition filed under the subsections (2), (3), or (4) is sufficient, including a clearly defined enforcement area, the district court judge shall issue an order requiring service of the petition on all water right owners within the enforcement area and the department. The order must set a time and place by which any interested party may show cause why the petition should not be granted. The provisions of Title 25, chapter 3, parts 2 and 3, and Rules 4 and 12(a), M.R.Civ.P. are applicable to actions brought under subsections (2), (3), or (4), so long as they are not in conflict with this section.

~~(5)-(6)~~ A person whose existing rights and priorities are determined in a temporary preliminary decree or preliminary decree or a person exercising a suspension under 85-2-217 and part 7 of this chapter may appeal a determination made pursuant to subsection (2).

(7) Any water distribution actions or proceedings initiated in the district court pursuant to this section shall be removed to the water division court for the following reasons:

(a) a petition for removal is brought by the department, a county attorney, or the attorney general under 85-2-114;

(b) a genuine distribution controversy exists as to the:

(i) interpretation of a prior Water Court order adjudicating one or more existing water rights; or

(ii) the scope of an existing water right;

(c) the enforcement area includes water sources located outside the boundaries of a judicial district; or

(d) upon discretion of the district court judge supervising the action.

Section 32. Section 85-5-101, MCA, is amended to read:

85-5-101. Appointment of water commissioners. (1) Whenever the rights of persons to use the waters of any stream, ditch or extension of ditch, watercourse, spring, lake, reservoir, or other source of supply have been determined by a decree of a court of competent jurisdiction, including temporary preliminary, preliminary, and final decrees issued by a water judge, it is the duty of the judge ~~of the district court~~ having jurisdiction of the subject matter, upon the application of the owners of at least 15% of the water rights affected by the decree or at least 15% of the flow rate of the water rights affected by the decree, in the exercise of the judge's discretion, to appoint one or more commissioners. The commissioners have authority to admeasure and distribute to the parties owning water rights in the source affected by the decree the waters to which they are entitled, according to their rights as fixed by the decree and by any certificates, permits, and changes in appropriation right issued under chapter 2 of this title. When petitioners make proper showing that they are not able to obtain the application of the owners of at least 15% of the water rights affected or at least 15% of the flow rate of the water rights affected and they are unable to obtain the water to which they are entitled, the judge ~~of the district court~~ having jurisdiction may appoint a water commissioner.

(2) When the existing rights of all appropriators from a source or in an area have been determined in a temporary preliminary decree, preliminary decree, or final decree issued under chapter 2 of this title, the judge having jurisdiction ~~of the district court~~ may, upon application by both the department of natural resources and conservation and one or more holders of valid water rights in the source, appoint a water commissioner. The water commissioner shall distribute to the appropriators, from the source or in the area, the water to which they are entitled.

(3) The department of natural resources and conservation or any person or corporation operating under contract with the department or any other owner of stored waters may petition the court to have stored waters distributed by the water commissioners appointed by the district court. The court may order the commissioner or commissioners appointed by the court to distribute stored water when and as released to water users entitled to the use of the water.

(4) At the time of the appointment of a water commissioner or commissioners, the ~~district~~ court shall fix their compensation, require a commissioner or commissioners to purchase a workers' compensation insurance policy and elect coverage on themselves, and require the owners and users of the distributed waters, including permittees, certificate holders, and holders of a change in appropriation right, to pay their proportionate share of fees and compensation, including the cost of workers' compensation insurance purchased by a water commissioner or commissioners. The judge may include the department in the apportionment of costs if it applied for the appointment of a water commissioner under subsection (2).

(5) Upon the application of the board or boards of one or more irrigation districts entitled to the use of water stored in a reservoir that is turned into the natural channel of any stream and withdrawn or diverted at a point downstream for beneficial use, the ~~district~~ court of the judicial district where the most irrigable acres of the irrigation district or districts are situated may appoint a water commissioner to equitably admeasure and distribute stored water to the irrigation district or districts from the channel of the stream into which it has been turned. A commissioner appointed under this subsection has the powers of any commissioner appointed under this chapter, limited only by the purposes of this subsection. A commissioner's compensation is set by the appointing judge and paid by each district and other users of stored water affected by the admeasurement and distribution of the stored water. In all other matters, the provisions of this chapter apply so long as they are consistent with this subsection.

(6) A water commissioner appointed by a district court or water division court is not an employee of the judicial branch, a local government, or a water user.

(7) A water commissioner who fails to obtain workers' compensation insurance coverage required by subsection (4) is precluded from receiving benefits under Title 39, chapter 71, as a result of the performance of duties as a water commissioner.

NEW SECTION. Section 37. Repealer. The following sections of the Montana Code Annotated are repealed:

- 3-7-221 Appointment of chief water judge and associate water judge – terms of office
- 3-7-222. Salary – office space.
- 3-7-223. Duties of chief water judge.
- 3-7-224 Jurisdiction of chief water judge and associate water judge.
- 3-7-225 Duties of associate water judge.

NEW SECTION. **Section 38. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each federally recognized tribal government in Montana.

NEW SECTION. **Section 39. Codification instruction.** (1) [Section 7] is intended to be codified as an integral component of Title 3, chapter 7, and the provisions of Title 3, chapter 7, part 1, apply to [section 7].

(2) [Section 10] is intended to be codified as an integral component of Title 3, chapter 7, and the provisions of Title 3, chapter 7, part 2, apply to [section 10].

(3) [Section 17] is intended to be codified as an integral component of Title 3, chapter 7, and the provisions of Title 3, chapter 7, part 2, apply to [section 17].

NEW SECTION. **Section 40. Effective date.** [This act] is effective on passage and approval.

Provisional Permits and Changes Bill Draft

Edited on 7/2/2024 subworking group

BILL NO. ____

INTRODUCED BY _____

BY REQUEST OF __ (Agency or Department) _____

A BILL FOR AN ACT ENTITLED: “AN ACT PROVIDING FOR THE RECONCILIATION OF PROVISIONAL PERMITS AND CHANGE AUTHORIZATIONS AFTER THE ISSUANCE OF A FINAL DECREE; _____; _____; _____; AMENDING SECTIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 85-2-313, MCA, is amended to read:

85-2-313. Provisional permit. (1) A permit issued prior to a final determination of existing water rights the issuance of a final decree pursuant to 85-2-234 in that basin is provisional and is subject to that final determination decree. Upon petition, the amount of the appropriation granted in a provisional permit must be reduced, modified, or revoked by the department following a show cause hearing in which it is determined that reduction, modification, or revocation is necessary to protect and guarantee existing water rights determined in the final decree. Because a provisional permit is issued on a reasonable determination of legal availability under 85-2-311(1)(b), in a show cause hearing under this section, legal availability must be determined on a consideration of the final decree in the affected basin or subbasin. A person may not obtain any vested right to an appropriation obtained under a provisional permit by virtue of construction of diversion works, purchase of equipment to apply water, planting of crops, or other action where the permit would have been denied or modified if the final decree had been available to the department.

(2) Within 60 days after the issuance of a final decree in a basin pursuant to 85-2-234, the department shall serve by mail a notice of all provisional permits issued to each owner of record of an existing right, a provisional permit, and a certificate of water right within the decreed basin. The department shall also serve the notice on those granted a reservation within the decreed basin pursuant to 85-2-316 and other interested persons who request service of the notice of availability from the department.

(3) Upon petition to the department filed in accordance with subsection (a) and (b) and following a show cause hearing in which it is determined that reduction, modification, or revocation of the provisional permit

is necessary to protect existing water rights determined in the final decree, the amount of the appropriation in the provisional permit must be reduced, modified, or revoked. Because a provisional permit is issued on a reasonable determination of legal availability under 85-2-311(1)(b), in a show cause hearing under this section, legal availability must be determined on a consideration of the final decree in the decreed basin.

(a) A correct and complete petition may be filed by the department or a person with an **existing water right** and **must demonstrate that the provisional permit would have been denied or modified if the final decree** had been available to the department at the time of issuance of the provisional permit.

(b) A correct and complete petition must be submitted on a form designated by the department within 180 days after issuance of the notice provided for in subsection (2).

(c) In basins for which a water judge has entered a final decree pursuant to 85-2-234 prior to [the effective date of this act], the department shall serve notice under subsection (2) within 60 days of [the effective date of this act]. Upon notice provided in subsection (2), a correct and complete petition must be submitted on a form designated by the department within 180 business days.

(4) If no petition is filed pursuant to subsection (3) the department shall issue a certificate of water right in accordance with 85-2-315.

Section 3. Section 85-2-315, MCA, is amended to read:

85-2-315. Certificate of water right. ~~Upon~~ (1) On actual application of water to the proposed beneficial use within the time allowed, the permittee shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed. If the permit is reduced or modified pursuant to 85-2-313, the permittee must include a certified statement describing how the appropriation complies with the reduction or modification. The department shall review the certified statement and may ~~then~~ inspect the appropriation to verify whether the appropriation was completed in substantial accordance with the terms of the permit, including any reduction or modification pursuant to 85-2-313. ~~and if it determines that the appropriation has been completed in substantial accordance with the permit, it shall issue the permittee a certificate of water right. The original of the certificate shall be sent to the permittee, and a duplicate shall be kept in the office of the department in Helena.~~

(a) If the department determines that the appropriation has been completed in substantial accordance with the permit and any reduction or modification pursuant to 85-2-313, it will issue a certificate of water right for the permit.

(b) If the department determines that permit was not completed in substantial compliance with the terms, conditions, restrictions, and limitations of the permit approval, including any reduction or modification pursuant to 85-2-313, the department may require the permittee to show cause why the permit should not be modified or revoked pursuant to 85-2-314.

(2) The department will issue a certificate of water right for a change in appropriation right that is verified or modified pursuant to 85-2-402 (9) and (10).

(3) The original of the certificate will be sent to the permittee or owner of the change in appropriation right, and a duplicate will be maintained in a centralized database.

Section 4. Section 85-2-402, MCA, is amended to read:

85-2-402. Changes in appropriation rights -- definition. (1) (a) The right to make a change in appropriation right subject to the provisions of this section in an existing water right, a permit, or a state water reservation is recognized and confirmed. In a change in appropriation right proceeding under this section, there is no presumption that an applicant for a change in appropriation right cannot establish lack of adverse effect prior to the adjudication of other rights in the source of supply pursuant to this chapter. Except as provided in [85-2-410](#) and subsections (15) and (16) of this section, an appropriator may not make a change in an appropriation right without the approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and complete application.

...

(9) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed. The department will review the certified statement and may inspect the appropriation to verify whether the appropriation was completed in substantial accordance with the terms of the change in appropriation right. For a change in appropriation right for an existing water right that was granted before final decree, the department will verify that the elements and conditions of the change in appropriation right are in substantial accordance with the elements of the existing water right as adjudicated by the final decree.

(10) If a change in appropriation right is not completed as approved by the department or legislature, ~~or~~ if the terms, conditions, restrictions, and limitations of the change in appropriation right approval are not

complied with, or if the elements of the change in appropriation right are not in substantial accordance with the elements of the existing water right in the final decree, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change in appropriation right approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change in appropriation right approval.

NEW SECTION. Section 5. Notifications to tribal governments. The secretary of state shall send a copy of [this act] to each federally recognized tribal government in Montana.

NEW SECTION. Section 6. Codification instruction. [Section 2] is intended to be codified as an integral component of Title 85, chapter 2, and the provisions of Title 85, chapter 2

NEW SECTION. Section. 7. Effective date. [This act] is effective on passage and approval.

DRAFT

Amendments to HB7 (2025) – Water Storage Innovation Grant Fund

Draft of legislative concept

OPTION A:

Section 1. Appropriations for reclamation and development grants. (X) There is appropriated to the department of natural resources and conservation from the natural resources projects state special revenue account established in 15-38-302 up to \$20,000,000 for grants for the purposes of water storage innovation feasibility and pilot projects to be awarded by the department over the course of the biennium beginning July 1, 2025.

OR OPTION B:

New Section 2. Water storage innovation grant and loan fund. (1) There is an account in the state special revenue fund established in 17-2-102 to be known as the water storage innovation grant and loan fund.

(2) Interest earned must be retained by the fund.

(3) Eligible uses include innovations in water storage projects identified in 85-1-704, and the disbursement of grants and authorization of loans in [section 3]

New Section 3. Authorization. (1) The amount transferred in [section 4] shall be held in escrow for loans and grants for the purposes of water storage innovation projects identified in 85-1-704.

(2) The interest rate for any loans made in the water storage innovation program from proceeds from subsection (1) must be negotiated with the department of natural resources and conservation at a rate and term consistent with loan financing available from other federal and state sources.

(3) Loan repayment may be interest only.

(4) The interest repaid must be placed in the state special revenue account established in [section 2] for use by the department for purposes of water storage innovation.

(5) The department shall issue any grants under the water storage innovation program consistent with all conditions provided for in the reclamation and development grant program. The department may establish any guidelines necessary to establish the water storage innovation program within the parameters of the reclamation and development grant program.

GOES WITH BOTH OPTION A AND B:

New Section 4. Transfer of funds. By July 1, 2025, the state treasurer shall transfer \$20 million from the general fund to the natural resources state special revenue account established in 15-38-302.

Waiver of Adverse Effect Bill Draft

Last edited 7/2/2024 (ready to post)

85-2-311. Criteria for issuance of permit. (1) A permit may be issued under this part prior to the adjudication of existing water rights in a source of supply. In a permit proceeding under this part, there is no presumption that an applicant for a permit cannot meet the statutory criteria of this section prior to the adjudication of existing water rights pursuant to this chapter. In making a determination under this section, the department may not alter the terms and conditions of an existing water right or an issued certificate, permit, or state water reservation. Except as provided in subsections (3) and (4), the department shall issue a permit if the applicant proves by a preponderance of evidence that the following criteria are met:

- (a) (i) there is water physically available at the proposed point of diversion in the amount that the applicant seeks to appropriate; and
- (ii) water can reasonably be considered legally available during the period in which the applicant seeks to appropriate, in the amount requested, based on the records of the department and other evidence provided to the department. Legal availability is determined using an analysis involving the following factors:
 - (A) identification of physical water availability;
 - (B) identification of existing legal demands on the source of supply throughout the area of potential impact by the proposed use; and
 - (C) analysis of the evidence on physical water availability and the existing legal demands, including but not limited to a comparison of the physical water supply at the proposed point of diversion with the existing legal demands on the supply of water.
- (b) (i) the water rights of a prior appropriator under an existing water right, a certificate, a permit, or a state water reservation will not be adversely affected. In this subsection (1)(b), adverse effect must be determined based on a consideration of an applicant's plan for the exercise of the permit that demonstrates that the applicant's use of the water will be controlled so the water right of a prior appropriator will be satisfied.
(ii) Written consent to the application by a prior appropriator proves by a preponderance of evidence that the prior appropriator's water rights identified in the written consent will not be adversely affected by the proposed permit.
- (c) the proposed means of diversion, construction, and operation of the appropriation works are adequate;
- (d) the proposed use of water is a beneficial use;
- (e) the applicant has a possessory interest or the written consent of the person with the possessory interest in the property where the water is to be put to beneficial use, or if the proposed use has a point of diversion, conveyance, or place of use on national forest system lands, the applicant has any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the permit;
- (f) the water quality of a prior appropriator will not be adversely affected;
- (g) the proposed use will be substantially in accordance with the classification of water set for the source of supply pursuant to 75-5-301(1); and

(h) the ability of a discharge permit holder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(2) The applicant is required to prove that the criteria in subsections (1)(f) through (1)(h) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (1)(f), (1)(g), or (1)(h), as applicable, may not be met. For the criteria set forth in subsection (1)(g), only the department of environmental quality or a local water quality district established under Title 7, chapter 13, part 45, may file a valid objection.

(3) The department may not issue a permit for an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the applicant proves by clear and convincing evidence that:

(a) the criteria in subsection (1) are met;

(b) the proposed appropriation is a reasonable use. A finding must be based on a consideration of the following:

(i) the existing demands on the state water supply, as well as projected demands, such as reservations of water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing beneficial uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(4) (a) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for federal non-Indian and Indian reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the criteria in this subsection (4) must be met before out-of-state use may occur.

(b) The department may not issue a permit for the appropriation of water for withdrawal and transportation for use outside the state unless the applicant proves by clear and convincing evidence that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (1) or (3) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(c) In determining whether the applicant has proved by clear and convincing evidence that the requirements of subsections (4)(b)(ii) and (4)(b)(iii) are met, the department shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

- (ii) whether the water that is the subject of the application could feasibly be transported to alleviate water shortages within the state of Montana;
 - (iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and
 - (iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.
- (d) When applying for a permit or a lease to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation, lease, and use of water.
- (5) Subject to [85-2-360](#), to meet the preponderance of evidence standard in this section, the applicant, in addition to other evidence demonstrating that the criteria of subsection (1) have been met, shall submit hydrologic or other evidence, including but not limited to water supply data, field reports, and other information developed by the applicant, the department, the U.S. geological survey, or the U.S. natural resources conservation service and other specific field studies.
- (6) An appropriation, diversion, impoundment, use, restraint, or attempted appropriation, diversion, impoundment, use, or restraint contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized appropriation, diversion, impoundment, use, or other restraint. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to appropriate, divert, impound, use, or otherwise restrain or control waters within the boundaries of this state except in accordance with this section.
- (7) The department may adopt rules to implement the provisions of this section.
- (8) For an application for ground water in a basin closed pursuant to [85-2-319](#), [85-2-321](#), [85-2-330](#), [85-2-336](#), [85-2-341](#), [85-2-343](#), or [85-2-344](#), the applicant shall comply with the provisions of [85-2-360](#) in addition to the requirements of this section.

"85-2-320. Change in appropriation right authorization for instream flow -- United States

department of agriculture, forest service. (1) (a) The department shall accept and process an application by the United States department of agriculture, forest service for a change in appropriation right under the provisions of 85-2-402 and this section to protect, maintain, or enhance streamflows to benefit the fishery or other resources on national forest system lands.

(b) To change an appropriation right, the United States department of agriculture, forest service must own the appropriation right that it seeks to change to an instream flow right, the diversion or withdrawal that is to be changed to instream flow must be located within or immediately adjacent to the exterior boundaries of national forest system lands on the date provided in 85-20-1401, Article IV.B.2., and the stream reach in which the streamflow is to be protected, maintained, or enhanced must be located within or immediately adjacent to the exterior boundaries of national forest system lands as of the date provided in 85-20-1401, Article IV.B.2. The application for a change in appropriation right must:

- (i) include specific information on the length and location of the stream reach in which the streamflow is to be protected, maintained, or enhanced; and
- (ii) provide a detailed streamflow measuring plan that describes the point where and the manner in which the streamflow must be measured.

(2) In addition to the requirements of 85-2-402, when applying for a change in appropriation right pursuant to this section, the United States department of agriculture, forest service, shall prove by a preponderance of the evidence that:

- (a) the change in appropriation right authorization to protect, maintain, or enhance streamflows to benefit the fishery or other resources, as measured at a specific point, will not adversely affect the water rights of other persons, except for a water right identified in a written consent to approval filed pursuant to 85-2-402(2)(a)(ii) in connection with the change in appropriation right; and
- (b) the amount of water for the proposed instream flow use is needed to protect, maintain, or enhance streamflows to benefit the fishery or other resources.
- (3) The proposed method of measurement of the water to protect, maintain, or enhance streamflows to benefit the fishery or other resources must be approved by the department before a change in appropriation right may be approved.
- (4) The department is not responsible for costs associated with installing devices or providing personnel to measure streamflows according to the measurement plan submitted under this section.
- (5) If an appropriation right is changed pursuant to this section, the priority of the appropriation right remains the same as the appropriation right that was changed.
- (6) A change in appropriation right authorization under this section does not create a right of access across private property or allow any infringement of private property rights.
- (7) The maximum quantity of water that may be subject to a change in appropriation right authorization to protect, maintain, or enhance streamflows to benefit the fishery or other resources is the amount historically diverted. However, only the amount historically consumed or a smaller amount if specified by the department in the change in appropriation right authorization may be used to protect, maintain, or enhance streamflows to benefit the fishery or other resources below the existing point of diversion.
- (8) The department may modify or revoke the change in appropriation right up to 10 years after it is approved if an appropriator with a priority of appropriation that is earlier than the change in appropriation right that was granted submits new evidence that was not available at the time the change in appropriation right was approved that proves by a preponderance of evidence that the appropriator's water right is adversely affected. A water right for which written consent to approval of the change in appropriation was filed pursuant to 85-2-402(2)(a)(ii) may not be the basis for modification or revocation of the change in appropriation.

"85-2-360. Ground water appropriation right in closed basins. (1) An application for a ground water appropriation right in a basin closed pursuant to 85-2-319, 85-2-321, 85-2-330, 85-2-336, 85-2-341, 85-2-343, or 85-2-344 must be accompanied by a hydrogeologic report conducted pursuant to 85-2-361, an aquifer recharge or mitigation plan if required, and an application for a change in appropriation right or rights if necessary.

(2) The department shall use the hydrogeologic report to determine if the proposed appropriation right could result in a net depletion of surface water.

(3) (a) For the purposes of 85-2-360 through 85-2-362, the prediction of net depletion does not mean that an adverse effect on a prior appropriator will occur or if an adverse effect does occur that the entire amount of net depletion is the cause of the adverse effect. A determination of whether or not there is an adverse effect on a prior appropriator as the result of a new appropriation right is a determination that must be made by the department based on the rate, location, and timing of the net depletion that causes the adverse effect relative to the historic beneficial use of the appropriation right that may be adversely affected.

(b) The department may not consider whether a net depletion causes adverse effect to a water right for which a written consent was filed pursuant to 85-2-311(1)(b)(ii).

~~(b)~~(c) The department may grant a permit for a new appropriation only if the applicant proves by a preponderance of the evidence that the adverse effect would be offset through an aquifer recharge or mitigation plan that meets the requirements of 85-2-362."

"85-2-402. Changes in appropriation rights -- definition. (1) (a) The right to make a change in appropriation right subject to the provisions of this section in an existing water right, a permit, or a state water reservation is recognized and confirmed. In a change in appropriation right proceeding under this section, there is no presumption that an applicant for a change in appropriation right cannot establish lack of adverse effect prior to the adjudication of other rights in the source of supply pursuant to this chapter. Except as provided in 85-2-410 and subsections (15) and (16) of this section, an appropriator may not make a change in an appropriation right without the approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and complete application.

(b) If an application involves a change in a point of diversion, conveyance, or place of use located on national forest system lands, the application is not correct and complete until the applicant has submitted proof to the department of any written special use authorization required by federal law for the proposed change in occupancy, use, or traverse of national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water.

(2) Except as provided in subsections (4) through (6), (15), (16), and (18) and, if applicable, subject to ~~subsection (17)~~ subsections (1)(c) and (17), the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:

(a) (i) The proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under part 3.

(ii) Written consent to the application by an appropriator proves by a preponderance of evidence that the appropriator's water rights identified in the written consent will not be adversely affected by the proposed change in appropriation.

(b) The proposed means of diversion, construction, and operation of the appropriation works are adequate, except for:

(i) a change in appropriation right for instream flow pursuant to 85-2-320 or 85-2-436;

(ii) a temporary change in appropriation right for instream flow pursuant to 85-2-408; or

(iii) a change in appropriation right pursuant to 85-2-420 for mitigation or marketing for mitigation.

(c) The proposed use of water is a beneficial use.

(d) The applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use or, if the proposed change involves a point of diversion, conveyance, or place of use on national forest system lands, the applicant has any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water. This subsection (2)(d) does not apply to:

(i) a change in appropriation right for instream flow pursuant to 85-2-320 or 85-2-436;

(ii) a temporary change in appropriation right for instream flow pursuant to 85-2-408; or

(iii) a change in appropriation right pursuant to 85-2-420 for mitigation or marketing for mitigation.

(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant.

(f) The water quality of an appropriator will not be adversely affected.

(g) The ability of a discharge permit holder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.

(4) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by a preponderance of evidence that:

(a) the criteria in subsection (2) are met; and

(b) the proposed change in appropriation right is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(5) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (4) are met; and

(b) for the withdrawal and transportation of appropriated water for out-of-state use, the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(6) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for federal non-Indian and Indian reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(a) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator

proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (4) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(b) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(c) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in appropriation right in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change in appropriation right. The department shall provide notice and may hold one or more hearings upon any other proposed change in appropriation right if it determines that the proposed change in appropriation right might adversely affect the rights of other persons, except for any right for which a written consent to approval has been filed pursuant to subsection 85-2-402(2)(a)(ii) in connection with the application.

(8) The department or the legislature, if applicable, may approve a change in appropriation right subject to the terms, conditions, restrictions, and limitations that it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change in appropriation right. The department may extend time limits specified in the change in appropriation right approval under the applicable criteria and procedures of 85-2-312.

(9) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed.

(10) If a change in appropriation right is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change in appropriation right approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change in appropriation right approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change in appropriation right approval.

(11) The original of a change in appropriation right approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(12) A person holding an issued permit or change in appropriation right approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change in appropriation right pursuant to this section.

(13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section.

(14) The department may adopt rules to implement the provisions of this section.

(15) (a) An appropriator may change an appropriation right for a replacement well without the prior approval of the department if:

(i) the appropriation right is for:

(A) ground water outside the boundaries of a controlled ground water area; or

(B) ground water inside the boundaries of a controlled ground water area and if the provisions of the rule establishing the controlled ground water area do not restrict a change in appropriation right;

(ii) the change in appropriation right is to replace an existing well and the existing well will no longer be used;

(iii) the rate and volume of the appropriation from the replacement well are equal to or less than that of the well being replaced and do not exceed:

(A) 450 gallons a minute for a municipal well; or

(B) 35 gallons a minute and 10 acre-feet a year for all other wells;

(iv) the water from the replacement well is appropriated from the same aquifer as the water appropriated from the well being replaced; and

(v) a timely, correct and complete notice of replacement well is submitted to the department as provided in subsection (15)(b).

(b) (i) After completion of a replacement well and appropriation of ground water for a beneficial use, the appropriator shall file a notice of replacement well with the department on a form provided by the department.

(ii) (A) The department shall review the notice of replacement well and shall issue an authorization of a change in an appropriation right if all of the criteria in subsection (15)(a) have been met and the notice is correct and complete.

(B) If the replacement well is located on national forest system lands, the notice is not correct and complete under this subsection (15) until the appropriator has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of constructing the replacement well.

(iii) The department may not issue an authorization of a change in appropriation right until a correct and complete notice of replacement well has been filed with the department. The department shall return a defective notice to the appropriator, along with a description of defects in the notice. The appropriator shall refile a corrected and completed notice of replacement well within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(iv) If a notice of replacement well is not completed within the time allowed, the appropriator shall:

(A) cease appropriation of water from the replacement well pending approval by the department; and

(B) submit an application for a change in appropriation right to the department pursuant to subsections (1) through (3).

(c) The provisions of this subsection (15) do not apply to an appropriation right abandoned under 85-2-404.

(d) For each well that is replaced under this subsection (15), the appropriator shall follow the well abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to 37-43-202.

(e) The provisions of subsections (2), (3), (9), and (10) do not apply to a change in appropriation right that meets the requirements of subsection (15)(a).

(16) (a) An appropriator may change an appropriation right without the prior approval of the department for the purpose of constructing a redundant water supply well in a public water supply system, as defined in 75-6-102, if the redundant water supply well:

(i) withdraws water from the same ground water source as the original well; and

(ii) is required by a state or federal agency.

(b) The priority date of the redundant water supply well is the same as the priority date of the original well. Only one well may be used at one time.

(c) Within 60 days of completion of a redundant water supply well, the appropriator shall file a notice of construction of the well with the department on a form provided by the department. The department may return a defective notice of construction to the appropriator for correction and completion. If the redundant water supply well is located on national forest system lands, the notice is not correct and complete under this subsection until the appropriator has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of constructing the redundant water supply well.

(d) The provisions of subsections (9) and (10) do not apply to a change in appropriation right that meets the requirements of this subsection (16).

(17) The department shall accept and process an application for a change in appropriation right for instream flow to protect, maintain, or enhance streamflows pursuant to 85-2-320 and this section and to benefit the fishery resource pursuant to 85-2-436 and this section.

(18) (a) An appropriator may change an appropriation right for a replacement point of diversion without the prior approval of the department if:

(i) the existing point of diversion is inoperable due to natural causes or deteriorated infrastructure;

(ii) there are no other changes to the water right;

(iii) the capacity of the diversion is not increased;

(iv) there are no points of diversion or intervening water rights between the existing point of diversion and the replacement point of diversion or the appropriator obtains written waivers from all intervening water right holders;

(v) the replacement point of diversion is on the same surface water source and is located as close as reasonably practicable to the existing point of diversion;

(vi) the replacement point of diversion replaces an existing point of diversion and the existing point of diversion will no longer be used;

(vii) the appropriator can show that the existing point of diversion has been used in the 10 years prior to the notice for change of appropriation right for a replacement point of diversion;

- (viii) the appropriator can show the change will not increase access to water availability, change the method of irrigation, if applicable, or increase the amount of water diverted, used, or consumed; and
- (ix) a timely, correct and complete notice of replacement point of diversion is submitted to the department as provided in subsection (18)(b).
- (b) (i) Within 60 days after completion of a replacement point of diversion, the appropriator shall file a notice of replacement point of diversion with the department on a form provided by the department.
- (ii) The department shall review the notice of replacement point of diversion and shall issue an authorization of a change in an appropriation right if all of the criteria in subsection (18)(a) have been met and the notice is correct and complete. The department may inspect the diversion to confirm that the criteria under subsection (18)(a) have been met. If the department issues an authorization of a change in an appropriation right for a replacement point of diversion, the department shall prepare a notice of the authorization and provide notice of the authorization in the same manner as required in 85-2-307 for applications.
- (iii) The department may not issue an authorization of a change in appropriation right until a correct and complete notice of replacement point of diversion has been filed with the department. The department shall return a defective notice to the appropriator, along with a description of defects in the notice. The appropriator shall refile a corrected and completed notice of replacement point of diversion within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.
- (iv) If a notice of replacement point of diversion is not filed and completed within the time allowed or if the department determines the criteria under subsection (18)(a) have not been met, the appropriator shall:
- (A) cease appropriation of water from the replacement point of diversion pending approval by the department; and
- (B) submit an application for a change in appropriation right to the department pursuant to subsections (1) through (3).
- (c) The provisions of this subsection (18) do not apply to an appropriation right abandoned under 85-2-404.
- (d) The provisions of subsections (2), (3), (9), and (10) do not apply to a change in appropriation right that meets the requirements of subsection (18)(a).
- (e) (i) An appropriator may file a correct and complete objection with the department alleging that the change in appropriation right for a replacement point of diversion will adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under Title 85, chapter 2, part 3.
- (ii) If the department determines after a contested case hearing between the appropriator and the objector that the rights of other appropriators have been or will be adversely affected, it may revoke the change or make the change subject to terms, conditions, restrictions, or limitations necessary to protect the rights of other appropriators.
- (iii) The burden of proof to prove lack of adverse effect at the hearing is on the appropriator changing the point of diversion.

"85-2-407. Temporary changes in appropriation right. (1) Except as provided in 85-2-410, an appropriator may not make a temporary change in appropriation right for the appropriator's use or another's use except with department approval in accordance with 85-2-402 and this section.

(2) Except as provided in subsection (9), a temporary change in appropriation right may be approved for a period not to exceed 10 years. A temporary change in appropriation right may be approved for consecutive or intermittent use.

(3) An authorization for a temporary change in appropriation right may be renewed by the department for a period not to exceed 10 years. There is no limitation on the number of renewals the appropriator may seek. Renewal of an authorization for a temporary change in appropriation right requires notice to the department by the appropriator. Upon receipt of the notice, the department shall notify other appropriators potentially affected by the renewal and shall allow 90 days for submission of new evidence of adverse effects to other water rights. A temporary change authorization may not be renewed by the department if it determines that the water right of an appropriator, other than an appropriator described in subsection (7) or 85-2-402(2)(a)(ii), is adversely affected.

(4) (a) During the term of the original temporary change authorization, the department may modify or revoke its authorization for a temporary change if it determines that the water right of an appropriator; other than an appropriator described in subsection (7) or 85-2-402(2)(a)(ii), is adversely affected.

(b) An appropriator, other than an appropriator identified in subsection (7), may object:

(i) during the initial temporary change application process;

(ii) during the temporary change renewal process; and

(iii) once during the term of the temporary change permit.

(5) The priority of appropriation for a temporary change in appropriation right is the same as the priority of appropriation of the right that is temporarily changed.

(6) Neither a change in appropriation right nor any other authorization right is required for reversion of the appropriation right to the permanent purpose, place of use, point of diversion, or place of storage after the period for which a temporary change was authorized expires.

(7) A person issued a water use permit with a priority of appropriation after the date of filing of an application for a temporary change in appropriation right under this section may not object to the exercise of the temporary change according to its terms, the renewal of the authorization for the temporary change, or the reversion of the appropriation right to its permanent purpose, place of use, point of diversion, or place of storage. Persons described in this subsection must be notified of the existence of any temporary change authorizations from the same source of supply.

(8) If a water right for which a temporary change in appropriation right has been approved is transferred as an appurtenance of real property, the temporary change remains in effect unless another change in appropriation right is authorized by the department.

(9) If the quantity of water that is subject to a temporary change in appropriation right is made available from the development of a new water conservation or storage project, a temporary change in appropriation right may be approved for a period not to exceed 30 years unless a renewal is obtained pursuant to subsection (3)."

"85-2-408. Temporary change authorization for instream flow -- additional requirements. (1) The department shall accept and process an application for a temporary change in appropriation rights to

maintain or enhance instream flow to benefit the fishery resource under the provisions of 85-2-402, 85-2-407, and this section. The application must:

(a) include specific information on the length and location of the stream reach in which the streamflow is to be maintained or enhanced; and

(b) provide a detailed streamflow measuring plan that describes the point where and the manner in which the streamflow must be measured.

(2) (a) A temporary change authorization under the provisions of this section is allowable only if the owner of the water right voluntarily agrees to:

(i) change the purpose of a consumptive use water right to instream flow for the benefit of the fishery resource; or

(ii) lease a consumptive use water right to another person for instream flow to benefit the fishery resource.

(b) For the purpose of this subsection (2), "person" means and is limited to an individual, association, partnership, or corporation.

(3) In addition to the requirements of 85-2-402 and 85-2-407, an applicant for a change authorization under this section shall prove by a preponderance of evidence that:

(a) the temporary change authorization for water to maintain and enhance instream flow to benefit the fishery resource, as measured at a specific point, will not adversely affect the water rights of other persons; and

(b) the amount of water for the proposed use is needed to maintain or enhance instream flows to benefit the fishery resource.

~~(4)~~ The applicant is not required to prove a lack of adverse effect for any water right identified in a written consent to approval filed pursuant to 85-2-402(2)(a)(ii) in connection with the change application.

~~(4)(5)~~ The department shall approve the method of measurement of the water to maintain and enhance instream flow to benefit the fishery resource through a temporary change authorization as provided in this section.

~~(5)(6)~~ Only the owner of the water right may seek enforcement of the temporary change authorization or object under 85-2-308.

~~(6)(7)~~ A temporary change authorization under this section does not create a right of access across private property or allow any infringement of private property rights.

~~(7)(8)~~ The maximum quantity of water that may be changed to maintain and enhance streamflows to benefit the fishery resource is the amount historically diverted. However, only the amount historically consumed, or a smaller amount if specified by the department in the lease authorization, may be used to maintain or enhance streamflows to benefit the fishery resource below the existing point of diversion."

Streamlined Change Process

(Replacement wells; POU for municipalities, county water & sewer districts, and stock tanks)

Edited on 7.2.2024

Notes:

- There are three modifications to the change process to streamline changes: replacement wells, POU for municipalities, county water and sewer, and stock tanks.
- I only underlined things that are new or are proposed to change from existing statute (85-2-402).
- Updated the notice and objection language from existing 85-2-402 and applied it to existing sections where it currently applies as well as the new sections being added. Reasoning is that notice and objection language was outdated because these processes were overhauled by HB 114.
- Tried to keep old processes consistent with how they currently exist in 85-2-402. I also applied this same principal to the new processes. That is why you see that DNRC would approve if correct & complete notice is received and then send to public notice/objections. Open to discussion on if new processes should follow this pathway but the general idea is that there are sideboards and should not be adverse effect to anyone and so to not hold things up, we would approve and then allow for objections.
- For SWG discussion: There have been discussions with stakeholders and internally about allowing water users to have a year on the new sections (4) and (5) to come into compliance (i.e., completed changes more than 60 days prior to filing form) upon the effective date of this bill. After one year has passed, the filing of timelines must be followed or the water user will be required to file a change under 85-2-402.

85-2-402. Changes in appropriation rights -- definition. (1) (a) The right to make a change in appropriation right subject to the provisions of this section in an existing water right, a permit, or a state water reservation is recognized and confirmed. In a change in appropriation right proceeding under this section, there is no presumption that an applicant for a change in appropriation right cannot establish lack of adverse effect prior to the adjudication of other rights in the source of supply pursuant to this chapter. Except as provided in **85-2-410** and **[New Section]** subsections (15) and (16) of this section, an appropriator may not make a change in an appropriation right without the approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and complete application.

(b) If an application involves a change in a point of diversion, conveyance, or place of use located on national forest system lands, the application is not correct and complete until the applicant has submitted proof to the department of any written special use authorization required by federal law for the proposed change in occupancy, use, or traverse of national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water.

(2) Except as provided in subsections (4) through (6), ~~(15), (16), and (18)~~ and, if applicable, subject to subsection ~~(17)~~(15), the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:

(a) The proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under part 3. For purposes of this section, adverse effects analysis is specific to the proposed change in appropriation right and a determination that water is not legally available pursuant to **85-2-311** does not necessarily mean that an adverse effect will occur.

(b) The proposed means of diversion, construction, and operation of the appropriation works are adequate, except for:

- (i) a change in appropriation right for instream flow pursuant to **85-2-320** or **85-2-436**;
 - (ii) a temporary change in appropriation right for instream flow pursuant to **85-2-408**; or
 - (iii) a change in appropriation right pursuant to **85-2-420** for mitigation or marketing for mitigation.
- (c) The proposed use of water is a beneficial use.

(d) The applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use or, if the proposed change involves a point of diversion, conveyance, or place of use on national forest system lands, the applicant has any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water. This subsection (2)(d) does not apply to:

- (i) a change in appropriation right for instream flow pursuant to **85-2-320** or **85-2-436**;
- (ii) a temporary change in appropriation right for instream flow pursuant to **85-2-408**; or
- (iii) a change in appropriation right pursuant to **85-2-420** for mitigation or marketing for mitigation.

(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant.

(f) The water quality of an appropriator will not be adversely affected.

(g) The ability of a discharge permit holder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.

(4) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by a preponderance of evidence that:

(a) the criteria in subsection (2) are met; and

(b) the proposed change in appropriation right is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing legal demands of water rights on the state water supply, as well as projected legal demands of water rights for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(5) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (4) are met; and

(b) for the withdrawal and transportation of appropriated water for out-of-state use, the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(6) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for federal non-Indian and Indian reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(a) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (4) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(b) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the existing legal demands of water rights placed on the applicant's supply in the state where the applicant intends to use the water.

(c) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in appropriation right in accordance with **85-2-307** and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change in appropriation right. The department shall provide notice and may hold one or more hearings upon any other proposed change in appropriation right if it determines that the proposed change in appropriation right might adversely affect the rights of other persons.

(8) The department or the legislature, if applicable, may approve a change in appropriation right subject to the terms, conditions, restrictions, and limitations that it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change in appropriation right. The department may extend time limits specified in the change in appropriation right approval under the applicable criteria and procedures of **85-2-312**.

(9) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed.

(10) If a change in appropriation right is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change in appropriation right approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change in appropriation right approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change in appropriation right approval.

(11) The original of a change in appropriation right approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(12) A person holding an issued permit or change in appropriation right approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change in appropriation right pursuant to this section.

(13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section.

(14) The department may adopt rules to implement the provisions of this section.

~~(15) (a) An appropriator may change an appropriation right for a replacement well without the prior approval of the department if:~~

~~(i) the appropriation right is for:~~

~~(A) ground water outside the boundaries of a controlled ground water area; or~~

~~(B) ground water inside the boundaries of a controlled ground water area and if the provisions of the rule establishing the controlled ground water area do not restrict a change in appropriation right;~~

~~(ii) the change in appropriation right is to replace an existing well and the existing well will no longer be used;~~

~~(iii) the rate and volume of the appropriation from the replacement well are equal to or less than that of the well being replaced and do not exceed:~~

~~(A) 450 gallons a minute for a municipal well; or~~

~~(B) 35 gallons a minute and 10 acre feet a year for all other wells;~~

~~(iv) the water from the replacement well is appropriated from the same aquifer as the water appropriated from the well being replaced; and~~

~~(v) a timely, correct and complete notice of replacement well is submitted to the department as provided in subsection (15)(b).~~

~~(b) (i) After completion of a replacement well and appropriation of ground water for a beneficial use, the appropriator shall file a notice of replacement well with the department on a form provided by the department.~~

~~(ii) (A) The department shall review the notice of replacement well and shall issue an authorization of a change in an appropriation right if all of the criteria in subsection (15)(a) have been met and the notice is correct and complete.~~

~~(B) If the replacement well is located on national forest system lands, the notice is not correct and complete under this subsection (15) until the appropriator has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of constructing the replacement well.~~

~~(iii) The department may not issue an authorization of a change in appropriation right until a correct and complete notice of replacement well has been filed with the department. The department shall return a defective notice to the appropriator, along with a description of defects in the notice. The appropriator shall refile a corrected and completed notice of replacement well within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.~~

~~(iv) If a notice of replacement well is not completed within the time allowed, the appropriator shall:~~

~~(A) cease appropriation of water from the replacement well pending approval by the department; and~~

~~(B) submit an application for a change in appropriation right to the department pursuant to subsections (1) through (3).~~

~~(c) The provisions of this subsection (15) do not apply to an appropriation right abandoned under **85-2-404**.~~

~~(d) For each well that is replaced under this subsection (15), the appropriator shall follow the well abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to **37-43-202**.~~

~~(e) The provisions of subsections (2), (3), (9), and (10) do not apply to a change in appropriation right that meets the requirements of subsection (15)(a).~~

~~(16)(a) An appropriator may change an appropriation right without the prior approval of the department for the purpose of constructing a redundant water supply well in a public water supply system, as defined in **75-6-102**, if the redundant water supply well:~~

~~(i) withdraws water from the same ground water source as the original well; and~~

~~(ii) is required by a state or federal agency.~~

~~(b) The priority date of the redundant water supply well is the same as the priority date of the original well. Only one well may be used at one time.~~

~~(c) Within 60 days of completion of a redundant water supply well, the appropriator shall file a notice of construction of the well with the department on a form provided by the department. The department may return a defective notice of construction to the appropriator for correction and completion. If the redundant water supply well is located on national forest system lands, the notice is not correct and complete under this subsection until the appropriator has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of constructing the redundant water supply well.~~

~~(d) The provisions of subsections (9) and (10) do not apply to a change in appropriation right that meets the requirements of this subsection (16).~~

~~(17)(15) The department shall accept and process an application for a change in appropriation right for instream flow to protect, maintain, or enhance streamflows pursuant to **85-2-320** and this section and to benefit the fishery resource pursuant to **85-2-436** and this section.~~

~~(18)(a) An appropriator may change an appropriation right for a replacement point of diversion without the prior approval of the department if:~~

~~(i) the existing point of diversion is inoperable due to natural causes or deteriorated infrastructure;~~

~~(ii) there are no other changes to the water right;~~

~~(iii) the capacity of the diversion is not increased;~~

~~(iv) there are no points of diversion or intervening water rights between the existing point of diversion and the replacement point of diversion or the appropriator obtains written waivers from all intervening water right holders;~~

~~(v) the replacement point of diversion is on the same surface water source and is located as close as reasonably practicable to the existing point of diversion;~~

~~(vi) the replacement point of diversion replaces an existing point of diversion and the existing point of diversion will no longer be used;~~

~~(vii) the appropriator can show that the existing point of diversion has been used in the 10 years prior to the notice for change of appropriation right for a replacement point of diversion;~~

~~(viii) the appropriator can show the change will not increase access to water availability, change the method of irrigation, if applicable, or increase the amount of water diverted, used, or consumed; and~~

~~(ix) a timely, correct and complete notice of replacement point of diversion is submitted to the department as provided in subsection (18)(b).~~

~~(b) (i) Within 60 days after completion of a replacement point of diversion, the appropriator shall file a notice of replacement point of diversion with the department on a form provided by the department.~~

~~(ii) The department shall review the notice of replacement point of diversion and shall issue an authorization of a change in an appropriation right if all of the criteria in subsection (18)(a) have been met and the notice is correct and complete. The department may inspect the diversion to confirm that the criteria under subsection (18)(a) have been met. If the department issues an authorization of a change in an appropriation right for a replacement point of diversion, the department shall prepare a notice of the authorization and provide notice of the authorization in the same manner as required in **85-2-307.8** for applications.~~

~~(iii) The department may not issue an authorization of a change in appropriation right until a correct and complete notice of replacement point of diversion has been filed with the department. The department shall return a defective notice to the appropriator, along with a description of defects in the notice. The appropriator shall refile a corrected and completed notice of replacement point of diversion within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.~~

~~(iv) If a notice of replacement point of diversion is not filed and completed within the time allowed or if the department determines the criteria under subsection (18)(a) have not been met, the appropriator shall:~~

~~(A) cease appropriation of water from the replacement point of diversion pending approval by the department; and~~

~~(B) submit an application for a change in appropriation right to the department pursuant to subsections (1) through (3).~~

~~(e) The provisions of this subsection (18) do not apply to an appropriation right abandoned under **85-2-404**.~~

~~(d) The provisions of subsections (2), (3), (9), and (10) do not apply to a change in appropriation right that meets the requirements of subsection (18)(a).~~

~~(e) (i) An appropriator may file a correct and complete objection with the department alleging that the change in appropriation right for a replacement point of diversion will adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under Title 85, chapter 2, part 3.~~

~~(ii) If the department determines after a contested case hearing between the appropriator and the objector that the rights of other appropriators have been or will be adversely affected, it may revoke the change or make the change subject to terms, conditions, restrictions, or limitations necessary to protect the rights of other appropriators.~~

~~(iii) The burden of proof to prove lack of adverse effect at the hearing is on the appropriator changing the point of diversion.~~

[New Section] Exceptions to change requirements.

(1) (a) An appropriator may change an appropriation right without the prior approval of the department for the purpose of constructing a redundant water supply well in a public water supply system, as defined in 75-6-102, if the redundant water supply well:

(i) withdraws water from the same ground water source as the original well; and

(ii) is required by a state or federal agency.

(b) The priority date of the redundant water supply well is the same as the priority date of the original well. Only one well may be used at one time.

(c) Within 60 days of completion of a redundant water supply well, the appropriator shall file a notice of construction of the well with the department on a form provided by the department. The department may return a defective notice of construction to the appropriator for correction and completion. If the redundant water supply well is located on national forest system lands, the notice is not correct and complete under this subsection until the appropriator has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of constructing the redundant water supply well.

(2) (a) An appropriator may change an appropriation right for a replacement well without the prior approval of the department if:

(i) the appropriation right is for:

(A) ground water outside the boundaries of a controlled ground water area; or

(B) ground water inside the boundaries of a controlled ground water area and if the provisions of the rule establishing the controlled ground water area do not restrict a change in appropriation right;

(ii) the change in appropriation right is to replace an existing well and the existing well will no longer be used;

(iii) the rate and volume of the appropriation from the replacement well are equal to or less than that of the well being replaced and ~~do not exceed:~~ the distance between the replacement well and the well being replaced is no greater than 50 feet;

~~(A) 450 gallons a minute for a municipal well; or~~

~~(B) 35 gallons a minute and 10 acre feet a year for all other wells;~~

(iv) the water from the replacement well is appropriated from the same aquifer as the water appropriated from the well being replaced; and

(v) a timely, correct and complete notice of replacement well is submitted to the department as provided in subsection (2)(b).

(b) (i) After completion of a replacement well and appropriation of ground water for a beneficial use, the appropriator shall file a notice of replacement well with the department on a form provided by the department.

(ii) (A) The department shall review the notice of replacement well and shall issue an authorization of a change in an appropriation right if all of the criteria in subsection (2)(a) have been met and the notice is correct and complete.

(B) If the replacement well is located on national forest system lands, the notice is not correct and complete under this subsection (2) until the appropriator has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of constructing the replacement well.

(iii) The department may not issue an authorization of a change in appropriation right until a correct and complete notice of replacement well has been filed with the department. The department shall return a defective notice to the appropriator, along with a description of defects in the notice. The appropriator shall refile a corrected and completed notice of replacement well within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(c) For each well that is replaced under this subsection (2), the appropriator shall follow the well abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to 37-43-202.

(3) (a) An appropriator may change an appropriation right for a replacement point of diversion without the prior approval of the department if:

(i) the existing point of diversion is inoperable due to natural causes or deteriorated infrastructure;

(ii) there are no other changes to the water right;

(iii) the capacity of the diversion is not increased;

(iv) there are no points of diversion or intervening water rights between the existing point of diversion and the replacement point of diversion or the appropriator obtains written waivers from all intervening water right holders;

(v) the replacement point of diversion is on the same surface water source and is located as close as reasonably practicable to the existing point of diversion;

(vi) the replacement point of diversion replaces an existing point of diversion and the existing point of diversion will no longer be used;

(vii) the appropriator can show that the existing point of diversion has been used in the 10 years prior to the notice for change of appropriation right for a replacement point of diversion;

(viii) the appropriator can show the change will not increase access to water availability, change the method of irrigation, if applicable, or increase the amount of water diverted, used, or consumed; and

(ix) a timely, correct and complete notice of replacement point of diversion is submitted to the department as provided in subsection (3)(b).

(b) (i) Within 60 days after completion of a replacement point of diversion, the appropriator shall file a notice of replacement point of diversion with the department on a form provided by the department.

(ii) The department shall review the notice of replacement point of diversion and shall issue an authorization of a change in an appropriation right if all of the criteria in subsection (3)(a) have been met and the notice is correct and complete. The department may inspect the diversion to confirm that the criteria under subsection (3)(a) have been met. If the department issues an authorization of a change in an appropriation right for a replacement point of diversion, the department shall prepare a public notice of the authorization as identified in subsection (7) and provide an opportunity to object as identified in subsection (8).

(iii) The department may not issue an authorization of a change in appropriation right until a correct and complete notice of replacement point of diversion has been filed with the department. The department shall return a defective notice to the appropriator, along with a description of defects in the notice. The appropriator shall refile a corrected and completed notice of replacement point of diversion within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(4) (a) A municipality as defined in 7-1-4121 or a county water and sewer district organized under Title 7, Chapter 13, Part 22, may change an appropriation right to expand the place of use of water provided through their municipal water delivery system without the prior approval of the department if:

(i) the capacity of the diversion(s) is not increased and will not exceed the flow rate of the appropriation right;

(ii) the volume appropriated from the diversion(s) is not increased and will not exceed the volume of the appropriation right;

(iii) there are no other changes to the water right;

(b) (i) Within 60 days of annexation by a municipality under Title 7, Chapter 2, Part 47, or addition of land to a county water and sewer district under Title 7, Chapter 13, Part 23, the appropriator shall file a notice of expansion of place of use with the department on a form provided by the department.

(ii) The department shall review the notice of expansion of place of use and shall issue an authorization of a change in an appropriation right if all the criteria in subsection (4)(a) have been met and the notice is correct and complete. If the department issues an authorization of a change in an appropriation right for an expansion of place of use, the department shall prepare a public notice of the authorization as identified in subsection (7) and provide an opportunity to object as identified in subsection (8).

(iii) The department may not issue an authorization of a change in appropriation right until a correct and complete notice of expansion of place of use has been filed with the department. The department shall return a defective notice to the appropriator, along with a description of defects in the notice. The appropriator shall refile a corrected and completed notice of expansion of place of use within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(c) Need to include language about this statute not giving them the ability to force someone onto the system

(5) (a) An appropriator with an existing water right, permit, or certificate of water right for stock use may add or move stock tanks without the prior approval of the department if:

(i) Stock tanks are added to a livestock direct from source right which does not increase the livestock use;

(ii) Additional stock tanks are added to an existing stock watering system; or

(iii) stock tanks are moved on an existing stock watering system.

(b) The following requirements must be met for changes filed under this subsection:

(i) The diverted flow rate of the stock watering system may not exceed the historical diverted flow rate of the stock watering system. For situations where stock tanks are being added to a livestock direct from source right, the maximum flow rate for the diversion to the tanks is 35 GPM;

(ii) The number of stock animal units that will be watered on the system does not exceed the historical number of stock animal units watered;

(iii) The stock tank system must have control structures in place to control diversions and prevent waste of water; and

(iv) The applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use; or, if the proposed change involves a point of diversion, conveyance, or place of use on national forest system lands, the applicant has any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water.

(c) (i) Within 60 days of completion of the stock tank system, the appropriator shall file a notice of stock tank change with the department on a form provided by the department.

(ii) The department shall review the notice of stock tank change and shall issue an authorization of change in appropriation right if all the criteria in subsection (5)(b) have been met and the notice is correct

and complete. If the department issues an authorization of a change in an appropriation right for stock tank change, the department shall prepare a public notice of the authorization as identified in subsection (7) and provide an opportunity to object as identified in subsection (8).

(iii) The department may not issue an authorization of a change in appropriation right until a correct and complete notice of stock tank change has been filed with the department. The department shall return a defective notice to the appropriator, along with a description of defects in the notice. The appropriator shall refile a corrected and completed notice of stock tank change within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(d) temporary changes under this subsection may be authorized in accordance with 85-2-407.

(6) If a notice under subsections (2), (3), (4) or (5) is not filed and completed within the time allowed or if the department determines the criteria under subsections (2), (3), (4) or (5) have not been met, the appropriator shall submit an application for a change in appropriation right to the department pursuant to 85-2-402.

(7) (a) The department shall prepare a public notice which includes a summary of the changes being authorized, and must state that not more than 45 days after the date of publication, persons may file with the department written objections to the application. The department shall publish the notice once in a newspaper of general circulation in the area of the source.

(b) the department shall also serve the notice by first-class mail upon:

(i) an appropriator of water or applicant for or holder of a permit who, according to the records of the department, may be affected by the proposed appropriation;

(ii) any purchaser under contract for deed, as defined in 70-20-115, of property that, according to the records of the department, may be affected by the proposed appropriation; and

(iii) any public agency that has reserved waters in the source under 85-2-316.

(c) The department may, in its discretion, also serve notice upon any state agency or other person the department feels may be interested in or affected by the proposed appropriation.

(d) The department shall file in its records proof of service by affidavit of the publisher in the case of notice by publication and by its own affidavit in the case of service by mail.

(8) (a) An appropriator may file a correct and complete objection with the department alleging that the change as authorized will adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under Title 85, chapter 2, part 3.

(ii) If the department determines after a contested case hearing between the appropriator and the objector that the rights of other appropriators have been or will be adversely affected, it may revoke the change or make the change subject to terms, conditions, restrictions, or limitations necessary to protect the rights of other appropriators.

(iii) The burden of proof to prove lack of adverse effect at the hearing is on the appropriator changing the water right.

Subdivision agency coordination bill for water/notice of intent

Last updated 7.2.2024

76-3-604. Review of subdivision application

76-3-604. Review of subdivision application -- review for required elements and sufficiency of information. (1)

- (a) A subdivision application is considered to be received on the date of delivery to the reviewing agent or agency and when accompanied by the review fee submitted as provided in [76-3-602](#).
- (b) Within 5 working days of receipt of a subdivision application, the reviewing agent or agency shall determine whether the application contains all of the listed materials as required by [76-3-504\(1\)\(a\)](#) **and information required by [76-3-622](#)** and shall notify the subdivider or, with the subdivider's written permission, the subdivider's agent of the reviewing agent's or agency's determination. If the reviewing agent or agency determines that elements are missing from the application, the reviewing agent or agency shall identify those elements in the notification.
- (2) (a) Within 15 working days after the reviewing agent or agency notifies the subdivider or the subdivider's agent that the application contains all of the required elements as provided in subsection (1), the reviewing agent or agency shall determine whether the application and required elements contain detailed, supporting information that is sufficient to allow for the review of the proposed subdivision under the provisions of this chapter and the local regulations adopted pursuant to this chapter and shall notify the subdivider or, with the subdivider's written permission, the subdivider's agent of the reviewing agent's or agency's determination.
- (b) If the reviewing agent or agency determines that information in the application is not sufficient to allow for review of the proposed subdivision, the reviewing agent or agency shall identify the insufficient information in its notification.
- (c) A determination that an application contains sufficient information for review as provided in this subsection (2) does not ensure that the proposed subdivision will be approved or conditionally approved by the governing body and does not limit the ability of the reviewing agent or agency or the governing body to request additional information during the review process.
- (3) The time limits provided in subsections (1) and (2) apply to each submittal of the application until:
- (a) a determination is made that the application contains the required elements and sufficient information; and
- (b) the subdivider or the subdivider's agent is notified.
- (4) After the reviewing agent or agency has notified the subdivider or the subdivider's agent that an application contains sufficient information as provided in subsection (2), the governing body shall approve, conditionally approve, or deny the proposed subdivision within 60 working days or 80 working days if the proposed subdivision contains 50 or more lots, based on its determination of whether the application conforms to the provisions of this chapter and to the local regulations adopted pursuant to this chapter, unless:
- (a) the subdivider and the reviewing agent or agency agree to an extension or suspension of the review period, not to exceed 1 year; or
- (b) a subsequent public hearing is scheduled and held as provided in [76-3-615](#).
- (5) (a) If the governing body fails to comply with the time limits under subsection (4), the governing body shall pay to the subdivider a financial penalty of \$50 per lot per month or a pro rata portion of a month, not to exceed the total amount of the subdivision review fee collected by the governing body for the subdivision application, until the governing body denies, approves, or conditionally approves the subdivision.

(b) The provisions of subsection (5)(a) do not apply if the review period is extended or suspended pursuant to subsection (4).

(6) If the governing body denies or conditionally approves the proposed subdivision, it shall send the subdivider a letter, with the appropriate signature, that complies with the provisions of [76-3-620](#).

(7) (a) The governing body shall collect public comment submitted at a hearing or hearings regarding the information presented pursuant to [76-3-622](#) and shall make any comments submitted or a summary of the comments submitted available to the subdivider within 30 days after conditional approval or approval of the subdivision application and preliminary plat.

(b) The subdivider shall, as part of the subdivider's application for sanitation approval, forward the comments or the summary provided by the governing body to the:

(i) reviewing authority provided for in Title 76, chapter 4, for subdivisions that will create one or more parcels containing less than 20 acres; and

(ii) local health department or board of health for proposed subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres.

(8) (a) For a proposed subdivision that will create one or more parcels containing less than 20 acres, the governing body may require approval by the department of environmental quality as a condition of approval of the final plat.

(b) For a proposed subdivision that will create one or more parcels containing 20 acres or more, the governing body may condition approval of the final plat upon the subdivider demonstrating, pursuant to [76-3-622](#), that there is an adequate water source and at least one area for a septic system and a replacement drainfield for each lot.

(9) (a) Review and approval, conditional approval, or denial of a proposed subdivision under this chapter may occur only under those regulations in effect at the time a subdivision application is determined to contain sufficient information for review as provided in subsection (2).

(b) If regulations change during the review periods provided in subsections (1) and (2), the determination of whether the application contains the required elements and sufficient information must be based on the new regulations.

(10) Unless otherwise provided by law, the governing body may review but does not have approval authority of the governing documents of the subdivision or amendments to the governing documents unless the governing documents directly and materially impact a condition of subdivision approval.

History: En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(part); amd. Sec. 1, Ch. 236, L. 1999; amd. Sec. 24, Ch. 582, L. 1999; amd. Sec. 4, Ch. 527, L. 2001; amd. Sec. 7, Ch. 298, L. 2005; amd. Sec. 5, Ch. 302, L. 2005; amd. Sec. 2, Ch. 405, L. 2009; amd. Sec. 3, Ch. 109, L. 2013; amd. Sec. 3, Ch. 319, L. 2021.

76-3-608. Criteria for local government review.

76-3-608. Criteria for local government review. (1) The basis for the governing body's decision to approve, conditionally approve, or deny a proposed subdivision is whether the subdivision application, preliminary plat, applicable environmental assessment, public hearing, planning board recommendations, or additional information demonstrates that development of the proposed subdivision meets the requirements of this chapter. A governing body may not deny approval of a proposed subdivision based solely on the subdivision's impacts on educational services or based solely on parcels within the subdivision having been designated as wildland-urban interface parcels under [76-13-145](#).

(2) The governing body shall issue written findings of fact that weigh the criteria in subsection (3), as applicable.

(3) A subdivision proposal must undergo review for the following primary criteria:

(a) except when the governing body has established an exemption pursuant to subsection (6) or except as provided in [76-3-509](#), [76-3-609](#)(2) or (4), or [76-3-616](#), the specific, documentable, and clearly defined impact on agriculture, agricultural water user facilities, local services, the natural environment, wildlife, wildlife habitat, and public health and safety, excluding any consideration of whether the proposed subdivision will result in a loss of agricultural soils;

(b) compliance with:

(i) the survey requirements provided for in part 4 of this chapter;

(ii) the local subdivision regulations provided for in part 5 of this chapter; and

(iii) the local subdivision review procedure provided for in this part;

(c) the provision of easements within and to the proposed subdivision for the location and installation of any planned utilities; and

(d) the provision of legal and physical access to each parcel within the proposed subdivision and the required notation of that access on the applicable plat and any instrument of transfer concerning the parcel.

(4) The governing body may require the subdivider to design the proposed subdivision to reasonably minimize potentially significant adverse impacts identified through the review required under subsection (3) but may not require a set-aside of land or monetary contribution for the loss of agricultural soils. Pursuant to [76-3-620](#), the governing body shall issue written findings to justify the reasonable mitigation required under this subsection (4).

(5) (a) In reviewing a proposed subdivision under subsection (3) and when requiring mitigation under subsection (4), a governing body may not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the impacts of a proposed development may be deemed unmitigable and will preclude approval of the subdivision.

(b) When requiring mitigation under subsection (4) and consistent with [76-3-620](#), a governing body shall consult with the subdivider and shall give due weight and consideration to the expressed preference of the subdivider.

(6) (a) A governing body may conditionally approve or deny a proposed subdivision as a result of the water and sanitation information provided pursuant to [76-3-622](#) or public comment received pursuant to [76-3-604](#) on the information provided pursuant to [76-3-622](#) only if the conditional approval or denial is based on existing subdivision, zoning, or other regulations that the governing body has the authority to enforce.

(b) (i) A governing body may approve a proposed subdivision if the applicant submits proof of adequate water rights pursuant to a permit under 85-2-311, a change under 85-2-402, an existing water right under 85-2-221, or a groundwater certificate or notice of intent to appropriate groundwater under 85-2-306 as determined by the Department of Natural Resources and Conservation.

(ii) The water allocation for each parcel utilizing a groundwater certificate under 85-2-306 must be identified on the final plat provided for 76-3-611 or recorded with any required certification of subdivision approval provided for 76-4-122.

(7) A governing body may not require as a condition of subdivision approval that a property owner waive a right to protest the creation of a special improvement district or a rural improvement district for capital improvement projects that does not identify the specific capital improvements for which protest is being waived. A waiver of a right to protest may not be valid for a time period longer than 20 years after the date that the final subdivision plat is filed with the county clerk and recorder.

(8) A governing body may not approve a proposed subdivision if any of the features and improvements of the subdivision encroach onto adjoining private property in a manner that is not otherwise provided for under chapter 4 or this chapter or if the well isolation zone of any proposed well to be drilled for the proposed subdivision encroaches onto adjoining private property unless the owner of the private property authorizes the encroachment. For the purposes of this section, "well isolation zone" has the meaning provided in [76-4-102](#).

(9) If a federal or state governmental entity submits a written or oral comment or an opinion regarding wildlife, wildlife habitat, or the natural environment relating to a subdivision application for the purpose of assisting a governing body's review, the comment or opinion may be included in the governing body's written statement under [76-3-620](#) only if the comment or opinion provides scientific information or a published study that supports the comment or opinion. A governmental entity that is or has been involved in an effort to acquire or assist others in acquiring an interest in the real property identified in the subdivision application shall disclose that the entity has been involved in that effort prior to submitting a comment, an opinion, or information as provided in this subsection.

(10) Findings of fact by the governing body concerning whether the development of the proposed subdivision meets the requirements of this chapter must be based on the record as a whole. The governing body's findings of fact must be sustained unless they are arbitrary, capricious, or unlawful.

History: En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(4); amd. Sec. 5, Ch. 272, L. 1993; amd. Sec. 6, Ch. 468, L. 1995; amd. Sec. 26, Ch. 582, L. 1999; amd. Sec. 7, Ch. 348, L. 2001; amd. Sec. 10, Ch. 298, L. 2005; amd. Sec. 6, Ch. 302, L. 2005; amd. Sec. 6, Ch. 455, L. 2007; amd. Sec. 1, Ch. 406, L. 2009; amd. Sec. 17, Ch. 446, L. 2009; amd. Sec. 1, Ch. 409, L. 2011; amd. Sec. 1, Ch. 112, L. 2013; amd. Sec. 2, Ch. 195, L. 2013; amd. Sec. 2, Ch. 362, L. 2017; amd. Sec. 1, Ch. 275, L. 2021; amd. Sec. 4, Ch. 319, L. 2021.

76-3-622. Water and sanitation information to accompany preliminary plat.

76-3-622. Water and sanitation information to accompany preliminary plat. (1) Except as provided in subsection (2), the subdivider shall submit to the governing body or to the agent or agency designated by the governing body the information listed in this section for proposed subdivisions that will include new water supply or wastewater facilities. The information must include:

(a) a vicinity map or plan that shows:

(i) the location, within 100 feet outside of the exterior property line of the subdivision and on the proposed lots, of:

(A) flood plains;

(B) surface water features;

(C) springs;

(D) irrigation ditches;

(E) existing, previously approved, and, for parcels less than 20 acres, proposed water wells and wastewater treatment systems, except that the subdivider may locate a water well anywhere on a lot, parcel, or tract of record if the subdivider maintains the minimum setback distances adopted in rule by the department of environmental quality;

(F) for parcels less than 20 acres, mixing zones identified as provided in subsection (1)(g); and

(G) the representative drainfield site used for the soil profile description as required under subsection (1)(d); and

(ii) the location, within 500 feet outside of the exterior property line of the subdivision, of public water and sewer facilities;

(b) a description of the proposed subdivision's water supply systems, storm water systems, solid waste disposal systems, and wastewater treatment systems, including:

(i) whether the water supply and wastewater treatment systems are individual, shared, multiple user, or public as those systems are defined in rules published by the department of environmental quality; and

(ii) if the water supply and wastewater treatment systems are shared, multiple user, or public, a statement of whether the systems will be public utilities as defined in [69-3-101](#) and subject to the jurisdiction of the public service commission or exempt from public service commission jurisdiction and, if exempt, an explanation for the exemption;

(c) a drawing of the conceptual lot layout at a scale no smaller than 1 inch equal to 200 feet that shows all information required for a lot layout document in rules adopted by the department of environmental quality pursuant to [76-4-104](#);

(d) evidence of suitability for new onsite wastewater treatment systems that, at a minimum, includes:

(i) a soil profile description from a representative drainfield site identified on the vicinity map, as provided in subsection (1)(a)(i)(G), that complies with standards published by the department of environmental quality;

(ii) demonstration that the soil profile contains a minimum of 4 feet of vertical separation distance between the bottom of the permeable surface of the proposed wastewater treatment system and a limiting layer; and

(iii) in cases in which the soil profile or other information indicates that ground water is within 7 feet of the natural ground surface, evidence that the ground water will not exceed the minimum vertical separation distance provided in subsection (1)(d)(ii);

(e) for new water supply systems, unless cisterns are proposed, evidence of adequate water availability:

- (ii) obtained from well logs or testing of onsite or nearby wells;
- (iii) obtained from information contained in published hydrogeological reports; or
- (iv) as otherwise specified by rules adopted by the department of environmental quality pursuant to [76-4-104](#);
[\(f\) for new water supply systems, proof of adequate water rights pursuant to a permit under 85-2-311, a change under 85-2-402, an existing water right under 85-2-221, or a groundwater certificate or notice of intent to appropriate groundwater under 85-2-306 as determined by the Department of Natural Resources and Conservation.](#)
- ~~(g)~~[\(g\)](#) evidence of sufficient water quality in accordance with rules adopted by the department of environmental quality pursuant to [76-4-104](#);
- ~~(g)~~[\(h\)](#) a preliminary analysis of potential impacts to ground water quality from new wastewater treatment systems, using as guidance rules adopted pursuant to [75-5-301](#) and [75-5-303](#) related to standard mixing zones for ground water, source specific mixing zones, and nonsignificant changes in water quality. The preliminary analysis may be based on currently available information and must consider the effects of overlapping mixing zones from proposed and existing wastewater treatment systems within and directly adjacent to the subdivision. Instead of performing the preliminary analysis required under this subsection (1)(g), the subdivider may perform a complete nondegradation analysis in the same manner as is required for an application that is reviewed under Title 76, chapter 4.
- (2) A subdivider whose land division is excluded from review under [76-4-125](#)(1) is not required to submit the information required in this section.
- (3) A governing body may not, through adoption of regulations, require water and sanitation information in addition to the information required under this section unless the governing body complies with the procedures provided in [76-3-511](#).

History: En. Sec. 4, Ch. 302, L. 2005; amd. Sec. 1, Ch. 165, L. 2013; amd. Sec. 5, Ch. 344, L. 2017; amd. Sec. 2, Ch. 80, L. 2019; amd. Sec. 77, Ch. 324, L. 2021; amd. Sec. 1, Ch. 673, L. 2023.

76-4-104. Rules for administration and enforcement.

76-4-104. Rules for administration and enforcement. (1) The department shall, subject to the provisions of [76-4-135](#), adopt reasonable rules, including adoption of sanitary standards, necessary for administration and enforcement of this part.

(2) The rules and standards must provide the basis for approving subdivisions for various types of public and private water supplies, sewage disposal facilities, storm water drainage ways, and solid waste disposal. The rules and standards must be related to:

- (a) size of lots;
- (b) contour of land;
- (c) porosity of soil;
- (d) ground water level;
- (e) distance from lakes, streams, and wells;
- (f) type and construction of private water and sewage facilities; and
- (g) other factors affecting public health and the quality of water for uses relating to agriculture, industry, recreation, and wildlife.

(3) The storm drainage review requirements of this chapter do not apply to divisions or parcels of land that are exempt from review under [76-3-207](#)(1)(a), (1)(d), (1)(e), or (1)(f) that:

- (a) are used for a single-family residential purpose; and
- (b) include no more than 25% that is impervious.

(4) (a) Except as provided in subsection (4)(b), the rules must provide for the review of subdivisions consistent with [76-4-114](#) by a local department or board of health, as described in Title 50, chapter 2, part 1, if the local department or board of health employs a registered sanitarian or a registered professional engineer and if the department certifies under subsection (5) that the local department or board is competent to conduct the review.

(b) (i) Except as provided in [75-6-121](#) and subsection (4)(b)(ii) of this section, a local department or board of health may not review public water supply systems, public sewage systems, or extensions of or connections to these systems.

(ii) A local department or board of health may be certified by the department to review subdivisions proposed to connect to existing municipal or county water and/or sewer district water and wastewater systems previously approved by the department if no extension of the systems is required.

(5) (a) The department shall also adopt standards and procedures for certification and maintaining certification to ensure that a local department, local board of health, or independent reviewer is competent to review the subdivisions as described in subsection (4).

(b) On or before December 31, 2023, the department shall develop procedures for certification of prequalified independent reviewers and develop a training curriculum to ensure compliance with this part.

(6) The department shall review those subdivisions described in subsection (4) if:

(a) a proposed subdivision lies within more than one jurisdictional area and the respective governing bodies are in disagreement concerning approval of or conditions to be imposed on the proposed subdivision; or

(b) the local department or board of health elects not to be certified.

(7) The rules must further provide for:

(a) providing the reviewing authority with a copy of the plat or certificate of survey subject to review under this part and other documentation showing the layout or plan of development, including:

(i) total development area; and

(ii) total number of proposed units and structures requiring facilities for water supply or sewage disposal;

(b) adequate evidence that a water supply that is sufficient in terms of quality, quantity, and dependability will be available to ensure an adequate supply of water for the type of subdivision proposed;

(c) (i) proof of adequate water rights pursuant to a permit under 85-2-311, a change under 85-2-402, an existing water right under 85-2-221, or a groundwater certificate or notice of intent to appropriate groundwater under 85-2-306 as determined by the Department of Natural Resources and Conservation.

(ii) The water allocation for each parcel utilizing an exempt well under 85-2-306 must be recorded with any required certification of subdivision approval provided for 76-4-122.

~~(c)~~(d) evidence concerning the potability of the proposed water supply for the subdivision;

~~(d)~~(e) adequate evidence that a sewage disposal facility is sufficient in terms of capacity and dependability;

~~(e)~~(f) standards and technical procedures applicable to storm drainage plans and related designs, in order to ensure proper drainage ways, except that the rules must provide a basis for not requiring storm water review under this part for parcels 5 acres and larger on which the total impervious area does not and will not exceed 5%. Nothing in this section relieves any person of the duty to comply with the requirements of Title 75, chapter 5, or rules adopted pursuant to Title 75, chapter 5.

~~(f)~~(g) standards and technical procedures applicable to sanitary sewer plans and designs, including soil testing and site design standards for on-lot sewage disposal systems when applicable;

~~(g)~~(h) standards and technical procedures applicable to water systems;

~~(h)~~(i) standards and technical procedures applicable to solid waste disposal;

~~(i)~~(j) adequate evidence that a proposed drainfield mixing zone and a proposed well isolation zone are located wholly within the boundaries of the proposed subdivision where the proposed drainfield or well is located or that an easement or, for public land, other authorization has been obtained from the landowner to place the proposed drainfield mixing zone or proposed well isolation zone outside the boundaries of the proposed subdivision where the proposed drainfield or proposed well is located.

(i) A proposed drainfield mixing zone or a proposed well isolation zone for an individual water system well that is a minimum of 50 feet inside the subdivision boundary may extend outside the boundaries of the subdivision onto adjoining land that is dedicated for use as a right-of-way for roads, railroads, or utilities.

(ii) This subsection (7)(i) does not apply to the divisions provided for in 76-3-207 except those under 76-3-207(1)(b). Nothing in this section is intended to prohibit the extension, construction, or reconstruction of or other improvements to a public sewage system within a well isolation zone that extends onto land that is dedicated for use as a right-of-way for roads, railroads, or utilities.

(j) criteria for granting waivers and deviations from the standards and technical procedures adopted under subsections (7)(e) through (7)(i);

(k) evidence to establish that, if a public water supply system or a public sewage system is proposed, provision has been made for the system and, if other methods of water supply or sewage disposal are proposed, evidence that the systems will comply with state and local laws and regulations that are in effect at the time of submission of the subdivision application under this chapter. Evidence that the systems will comply with local laws and regulations must be in the form of a certification from the local health department as provided by department rule.

(l) evidence to demonstrate that appropriate easements, covenants, agreements, and management entities have been established to ensure the protection of human health and state waters and to ensure the long-term operation and maintenance of water supply, storm water drainage, and sewage disposal facilities;

(m) eligibility requirements for municipalities and county water and/or sewer districts to qualify as a certifying authority under the provisions of [76-4-127](#);

(n) construction details for individual and shared onsite wastewater systems to be reviewed by the local board of health at the time of septic permitting, except that the reviewing authority may require additional construction detail if the wastewater is not residential strength;

(o) simplified methods for storm water reviews, including acceptable minimum storm water volumes based solely on impervious area for proposed lots with one or two single-family residences; and

(p) a basis for exempting from review facilities previously approved under this chapter or by a local reviewing authority of the facility is not proposed to be changed, is not affected by a proposed change to another facility, and meets the design conditions of its existing approval under this chapter or by the local authority and is operating properly. Existing systems must meet the current setbacks established in rule and subsection (7)(i), unless the lot was created before the relevant effective dates for mixing zones and isolation zones.

(8) The requirements of subsection (7)(i) regarding proposed drainfield mixing zones and proposed well isolation zones apply to all subdivisions or divisions excluded from review under [76-4-125](#) created after October 1, 2021, except as provided in subsections (7)(i)(i) and (7)(i)(ii).

(9) The department shall:

(a) conduct a biennial review of experimental wastewater system components that have been granted a waiver or deviation as provided in subsection (7)(j);

(b) utilize relevant analysis of wastewater system components approved in other states and data from peer-reviewed third-party studies to conduct the review provided in subsection (9)(a);

(c) propose those experimental wastewater system components that meet the purposes and provisions of this part for adoption into the rules pursuant to this section; and

(d) report to the local government interim committee biennially, in accordance with [5-11-210](#), the number and type of experimental wastewater system components reviewed and the number and type of system components approved and provide written findings to explain why a system component was reviewed but not approved.

(10) Review and certification or denial of certification that a division of land is not subject to sanitary restrictions under this part may occur only under those rules in effect when a complete application is submitted to the reviewing authority, except that in cases in which current rules would preclude the use for which the lot was originally intended, the applicable requirements in effect at the time the lot was recorded must be applied. In the absence of specific requirements, minimum standards necessary to protect public health and water quality apply.

(11) The reviewing authority may not deny or condition a certificate of subdivision approval under this part unless it provides a written statement to the applicant detailing the circumstances of the denial or condition imposition. The statement must include:

(a) the reason for the denial or condition imposition;

(b) the evidence that justifies the denial or condition imposition; and

(c) information regarding the appeal process for the denial or condition imposition.

(12) (a) Subject to subsection (12)(b), the department may adopt rules that provide technical details and clarification regarding the water and sanitation information required to be submitted under [76-3-622](#).

(b) A subdivider may locate a water well anywhere on a lot, parcel, or tract of record if the subdivider maintains the minimum setback distances adopted in rule. The reviewing authority may not limit a subdivider to a single proposed well location.

(13) (a) The rules must provide for the review of subdivisions consistent with [76-4-114](#) by an independent reviewer if the department certifies under subsection (5) of this section that the independent reviewer is competent to conduct the review.

(b) (i) Except as provided in subsection (13)(b)(ii), an independent reviewer may not review public water supply systems, public sewage systems, or extensions of or connections to these systems.

(ii) An independent reviewer may be certified by the department to review subdivisions proposed to connect to existing municipal or county water and/or sewer district water and wastewater systems previously approved by the department if no extension of the system is required.

(c) If 110 or more new files are submitted to the department for review in any 1 month, the department shall assign applications received in that month to independent reviewers unless an independent reviewer is not available.

(d) The department shall reimburse independent reviewers at the same rate the department reimburses local departments or local boards of health certified under subsection (4).

(14) Prior to being assigned an application for review, an independent reviewer shall identify any conflict of interest related to the project under potential review. If the independent reviewer identifies a conflict of interest, the application for review must be assigned to a different independent reviewer.

(15) An independent reviewer acting under the requirements of this chapter shall comply with the provisions of Title 2, chapter 6, for public information requests.

(16) An independent reviewer conducting reviews under this section shall complete documents necessary to complete the review and to comply with:

(a) the Montana Environmental Policy Act provided for in Title 75, chapter 1, parts 1 through 3; and

(b) real property takings requirements in accordance with Title 70.

History: En. Sec. 152, Ch. 197, L. 1967; amd. Sec. 3, Ch. 509, L. 1973; amd. Sec. 3, Ch. 529, L. 1975; amd. Sec. 3, Ch. 557, L. 1977; R.C.M. 1947, 69-5005(part); amd. Sec. 2, Ch. 378, L. 1985; amd. Sec. 2, Ch. 490, L. 1985; amd. Sec. 1, Ch. 224, L. 1995; amd. Sec. 19, Ch. 471, L. 1995; amd. Sec. 5, Ch. 280, L. 2001; amd. Sec. 7, Ch. 302, L. 2005; amd. Sec. 1, Ch. 83, L. 2011; amd. Sec. 1, Ch. 217, L. 2011; amd. Sec. 4, Ch. 195, L. 2013; amd. Sec. 2, Ch. 261, L. 2017; amd. Sec. 6, Ch. 344, L. 2017; amd. Sec. 5, Ch. 80, L. 2019; amd. Sec. 1, Ch. 49, L. 2021; amd. Sec. 3, Ch. 419, L. 2021; amd. Sec. 3, Ch. 611, L. 2023; amd. Sec. 3, Ch. 673, L. 2023; amd. Sec. 3, Ch. 752, L. 2023.

76-4-108. Enforcement.

76-4-108. Enforcement. (1) If the reviewing authority has reason to believe that a violation of this part or a rule adopted or an order issued under this part has occurred, the reviewing authority may have written notice and an order served personally or by certified mail on the alleged violator or the alleged violator's agent. The notice must state the provision alleged to be violated, the facts alleged to constitute the violation, the corrective action required by the reviewing authority, and the time within which the action is to be taken. A notice and order issued by the department under this section may also assess an administrative penalty as provided in 76-4-109. The alleged violator may, no later than 30 days after service of a notice and order under this section, request a hearing before the local reviewing authority if it issued the notice of violation or the board if the department issued the notice of violation. A request for a hearing must be filed in writing with the appropriate entity and must state the reason for the request. If a request is filed, a hearing must be held within a reasonable time.

(2) In addition to or instead of issuing an order, the reviewing authority may initiate any other appropriate action to compel compliance with this part.

(3) The provisions of this part may be enforced by a reviewing authority other than the department or board only for those divisions described in 76-4-104(4). If a local reviewing authority fails to adequately enforce the provisions of this part, the department or the board may compel compliance with this part under the provisions of this section.

(4) When a local reviewing authority exercises the authority delegated to it by this section, the local reviewing authority is legally responsible for its actions under this part.

(5) If the department or a local reviewing authority determines that a violation of this part, a rule adopted under this part, or an order issued under this part has occurred, the department or the local reviewing authority may revoke its certificate of approval for the subdivision and reimpose sanitary restrictions following written notice to the alleged violator. Upon revocation of a certificate, the person aggrieved by revocation may request a hearing. A hearing request must be filed in writing within 30 days after receipt of the notice of revocation and must state the reason for the request. The hearing is before the board if the department revoked the certificate or before the local reviewing authority if the local reviewing authority revoked the certificate.

(6) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing held under this section.

(7) Enforcement of water rights under title 85, chapter 2 and the terms, conditions, restrictions, and limits under 76-4-112 (1)(b) will be conducted by the Department of Natural Resources and Conservation.

76-4-113. Notification to purchasers.

76-4-113. Notification to purchasers. The developer or owner of an approved subdivision shall provide each purchaser of property within the subdivision with a copy of the plat or certificate of survey and the certificate of subdivision approval specifying the approved type and locations of water supply, [proof of adequate water rights as required in 76-4-104\(7\)](#), storm water drainage, and sewage disposal facilities and information regarding connection to municipal, county water and/or sewer district, or regional authority facilities provided for under 76-4-130. Each subsequent seller of property within the subdivision shall include within the instruments of transfer a reference to the conditions of the certificate of subdivision approval. The seller of any lot recorded with the exemption in 76-4-125(1)(c) shall include within the instruments of transfer a reference to that exclusion and a statement that the lot has not been reviewed or approved under this part. A written verification of notice that is signed by both the seller and the purchaser and is recorded with the county clerk and recorder constitutes conclusive evidence of compliance with this section for that transaction.

76-4-114. Review of application.

76-4-114. Review of application. Except as provided in 76-4-125, the applicant shall submit an application for review of a subdivision pursuant to the following procedure:

(1) An applicant may request a preapplication meeting with the reviewing authority prior to submitting an application. The reviewing authority shall schedule the requested meeting between the applicant and the reviewing authority within 30 days of receiving the request from the applicant. The meeting may be conducted in person, via telephone, or via teleconference. For informational purposes only, the reviewing agent shall identify the state laws and rules that may apply to the subdivision review process.

(2) If the proposed development includes onsite sewage disposal facilities, the applicant shall notify the designated agent of the local board of health prior to presenting the subdivision application to the reviewing authority. The agent may conduct a preliminary site assessment to determine whether the site meets applicable state and local requirements.

(3) (a) After submitting an application if required under the Montana Subdivision and Platting Act, the applicant shall submit an application to the reviewing authority. A subdivision application is considered to be received on the date of delivery to the reviewing authority when accompanied by the review fee established pursuant to 76-4-105.

(b) Within 15 days of the receipt of an application, the reviewing authority or independent reviewer shall determine whether the application contains the elements required by 76-4-115(1) to allow for review and shall notify the applicant of the determination. If the reviewing authority or independent reviewer determines that elements are missing from the application, the reviewing agent or agency shall identify those elements in the notification. The applicant shall address the missing elements identified by the reviewing authority or independent reviewer. A determination that an application contains the required elements for review as provided in this subsection (3)(b) does not ensure that the proposed subdivision will be approved and does not limit the ability of the reviewing authority or independent reviewer to request additional information during the review process.

(c) (i) After the reviewing authority or independent reviewer notifies the applicant that the application contains all of the required elements as provided by subsection (3)(b), the reviewing authority or independent reviewer shall make a final decision or a recommendation on the application. Except as provided by subsection (4), the reviewing authority or independent reviewer shall:

(A) make a final decision within 40 days of finding that the application contains all of the required elements if the reviewing authority is the department; or

(B) make a recommendation for approval to the department or deny the application within 30 days of finding that the application contains all of the required elements if the reviewing authority is a local department, local board of health, or independent reviewer. If the department receives a recommendation for approval of the subdivision from a local department, local board of health, or independent reviewer, the department shall make a final decision on the application within 10 days of receiving the recommendation.

(ii) If the department approves the application, the department shall issue a certificate of subdivision approval indicating that it has approved the plans and specifications, [proof of adequate water rights as required in 76-4-104\(7\)](#), and that the subdivision is not subject to a sanitary restriction.

(iii) If the reviewing authority or independent reviewer denies the application, the reviewing authority or independent reviewer shall identify the deficiencies that result in the denial in a notification to the applicant. The reviewing authority may identify other apparent deficiencies in additional information submitted after the initial application.

(d) (i) If the reviewing authority or independent reviewer denies an application and the applicant resubmits a corrected application within 30 days after the date of the denial letter, the reviewing authority or independent reviewer shall complete review of the resubmitted application within 30 days after receipt of the resubmitted application.

(ii) If the reviewing authority or independent reviewer denies an application and the applicant resubmits a corrected application after 30 days after the date of the denial letter, the reviewing authority or independent reviewer shall complete review of the resubmitted application within:

(A) 55 days after receipt of the resubmitted application if the reviewing authority is the department; or

(B) 45 days after receipt of the resubmitted application if the reviewing authority is a local department, local board of health, or independent reviewer.

(iii) If the review of the resubmitted application is conducted by a local department, local board of health, or independent reviewer and the reviewing authority or independent reviewer makes a recommendation to the department for approval of the application, the department shall make a final decision on the application within 10 days after the local reviewing authority or independent reviewer completes its review under subsection (3)(d)(i) or (3)(d)(ii).

(4) Except as provided in subsections (6) and (7), if the reviewing authority or independent reviewer needs an extension of a deadline in this section to complete its review or if an applicant requests an extension of a deadline, then the reviewing authority or independent reviewer shall notify the applicant of the extension prior to the end of the review deadline. An extension under this subsection may not exceed 30 days.

(5) The reviewing authority or independent reviewer may extend a deadline in this section until the items required in 76-4-115(2) and 76-4-104 (7)(c) are submitted. The reviewing authority or independent reviewer shall notify the applicant of the extension before the end of the review deadline. The reviewing authority or independent reviewer shall make a final decision within 30 days of receipt of the items required in 76-4-115(2).

(6) The department may extend a deadline under subsections (3)(c) and (3)(d) by 90 days if an environmental assessment is required.

(7) The department may extend a deadline under subsections (3)(c) and (3)(d) by 120 days if an environmental impact statement is required.

(8) An application is considered an overdue application if the department has not provided a response or met the statutory timelines provided in this section.

(9) If a municipal system has been delegated review authority under 75-6-112, the department is not required to review water or sewer facilities that have already been approved by the municipality.

History: En. Sec. 1, Ch. 344, L. 2017; amd. Sec. 10, Ch. 80, L. 2019; amd. Sec. 5, Ch. 611, L. 2023.

76-4-122. Certain filings prohibited.

76-4-122. Certain filings prohibited. (1) The county clerk and recorder may not file or record any plat, certificate of survey, or townhome, townhouse, or condominium declaration subject to review under this part showing a subdivision unless it complies with the provisions of this part.

(2) A county clerk and recorder may not accept a subdivision plat, certificate of survey, or townhome, townhouse, or condominium declaration subject to review under this part for filing until one of the following conditions has been met:

(a) the person wishing to file the plat, certificate of survey, or townhome, townhouse, or condominium declaration has obtained approval of the local health officer having jurisdiction and has filed the approval with the reviewing authority and a certificate of subdivision approval has been issued pursuant to 76-4-114 indicating that the reviewing authority has approved the subdivision application and that the subdivision is not subject to a sanitary restriction;

(b) the person wishing to file the plat, certificate of survey, or townhome, townhouse, or condominium declaration has obtained a certificate from the certifying authority pursuant to 76-4-127 that the subdivision will be provided with adequate municipal or county water and/or sewer district facilities and adequate storm water drainage; or

(c) the person wishing to file the plat, certificate of survey, or townhome, townhouse, or condominium declaration has placed on the plat, certificate of survey, or townhome, townhouse, or condominium declaration an acknowledged certification that the subdivision is exempt from review under this part. The certification must quote in its entirety the wording of the applicable exemption.

(3) proof of adequate water rights as required in 76-4-104(7).

Draft

[New Section] **Proof of adequate water rights pursuant to Sanitation and Platting Act**

(1) On a form provided by the department, an applicant shall request from the Department proof of adequate water rights pursuant to a permit under 85-2-311, a change under 85-2-402, an existing water right under 85-2-221, or a groundwater certificate or notice of intent to appropriate groundwater under 85-2-306 for the purposes of Sanitation and Platting Act approval.

85-2-306. Exceptions to permit requirements.

85-2-306. Exceptions to permit requirements. (1) (a) Except as provided in subsection (1)(b), ground water may be appropriated only by a person who has a possessory interest in the property where the water is to be put to beneficial use and exclusive property rights in the ground water development works.

(b) If another person has rights in the ground water development works, water may be appropriated with the written consent of the person with those property rights or, if the ground water development works are on national forest system lands, with any prior written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the certificate.

(c) If the person does not have a possessory interest in the real property from which the ground water may be appropriated, the person shall provide to the owner of the real property written notification of the works and the person's intent to appropriate ground water from the works. The written notification must be provided to the landowner at least 30 days prior to constructing any associated works or, if no new or expanded works are proposed, 30 days prior to appropriating the water. The written notification under this subsection is a notice requirement only and does not create an easement in or over the real property where the ground water development works are located.

(2) Inside the boundaries of a controlled ground water area, ground water may be appropriated only:

(a) according to a permit received pursuant to [85-2-508](#); or

(b) according to the requirements of a rule promulgated pursuant to [85-2-506](#).

(3) (a) Outside the boundaries of a controlled ground water area, a permit is not required before appropriating ground water by means of a well or developed spring:

(i) when the appropriation is made by a [local governmental fire agency](#) organized under Title 7, chapter 33, and the appropriation is used only for emergency fire protection, emergency fire training, and emergency fire-related operations, which may include enclosed storage;

(ii) when a maximum appropriation of 350 gallons a minute or less is used in [nonconsumptive geothermal heating or cooling exchange](#) applications, all of the water extracted is returned without delay to the same source aquifer, and the distance between the extraction well and both the nearest existing well and the hydraulically connected surface waters is more than twice the distance between the extraction well and the injection well;

(iii) when the appropriation is [outside a stream depletion zone](#), is 35 gallons a minute or less, and does not exceed 10 acre-feet a year, except that a combined appropriation from the same source by two or more wells or developed springs exceeding 10 acre-feet, regardless of the flow rate, requires a permit; or

(iv) when the appropriation is [within a stream depletion zone](#), is 20 gallons a minute or less, and does not exceed 2 acre-feet a year, except that a combined appropriation from the same source by two or more wells or developed springs exceeding this limitation requires a permit.

(b) (i) An appropriator may not appropriate groundwater without a permit pursuant to subsection 3 (a)(ii), 3(a)(iii) or 3(a)(iv) unless a notice of intent to appropriate groundwater is approved by the department. An appropriator must file a correct and complete notice of intent to appropriate on a form provided by the department.

(ii) A notice of intent to appropriate groundwater for a water supply system subject to Title 75, chapter 6, part 1, may be submitted pursuant to this subsection. Water appropriated under this exception must be measured and reported annually to the department.

(iii) Upon receipt of notice of intent to appropriate, the department shall review the notice and may, before issuing an approval, return a defective notice of intent to appropriate for correction or completion, together with the reasons for returning it. A notice of intent to appropriate not corrected and completed within 30 days of a notice of defects is terminated.

(iv) An appropriation under this subpart must be completed within five years from the date the notice of intent to appropriate is accepted by the department.

(v) Upon completion of construction of the diversion works and beneficial use of the water, the appropriator shall file a notice of completion pursuant to subsection 3(c).

(b)(c)(i) Within 60 days of completion of the well or developed spring and appropriation of the ground water for beneficial use, the appropriator shall file a notice of completion with the department on a form provided by the department through its offices.

(iii) Upon receipt of the notice, the department shall review the notice and may, before issuing a certificate of water right, return a defective notice for correction or completion, together with the reasons for returning it. A correct and complete notice of completion for an appropriation under 3(a)(iii) or 3(a)(iv) must establish the appropriation was completed in substantial accordance with the notice of proposal of appropriation approved by the department under subsection 3(b). A notice does not lose priority of filing because of defects if the notice is corrected, completed, and refiled with the department within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(iii) If a notice is not corrected and completed within the time allowed, the priority date of appropriation is the date of refiled a correct and complete notice with the department.

(c) A certificate of water right may not be issued until a correct and complete notice has been filed with the department, including proof of landowner notification or a written federal special use authorization as necessary under subsection. The original of the certificate must be sent to the appropriator. The department shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date of priority of the right.

(d) (i) Construction of a water supply system subject to Title 75, chapter 6, part 1, for the appropriation of water pursuant to this section is proof of beneficial use.

(ii) The department shall allocate a volume of 10 acre-feet a year to the system and issue a certificate of water right after the conditions in subsection (3)(d)(i) are met.

(iii) The department shall consider a water right as perfected after the conditions in subsection (3)(d)(i) are met.

(iv) When the appropriation is for a water supply system that is subject to Title 75, chapter 6, part 1, and is located outside of a stream depletion zone and does not exceed 10 acre-feet a year:

(A) For the purposes of subsection (3)(b)(i), the appropriation will be considered perfected upon completion of construction of the water supply system.

(B) A copy of the department of environmental quality approval for the water supply system must be submitted with the notice of completion. This section does not preclude the public water supply developer or any subsequent owners from expanding the water system or from revising the water use restrictions within the subdivision, provided that the total amount does not exceed 10 acre-feet per year.

(C) Water appropriated under this exception must be measured and reported annually to the department.

(4) An appropriator of ground water by means of a well or developed spring first put to beneficial use between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April

14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection (3), with the department to perfect the water right. The filing of a claim pursuant to [85-2-221](#) is sufficient notice of completion under this subsection. The priority date of the appropriation is the date of the filing of a notice, as provided in subsection (3), or the date of the filing of the claim of existing water right.

(5) An appropriation under subsection (4) is an existing right, and a permit is not required. However, the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that for an appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, the department shall issue a certificate of water right. If a certificate is issued under this section, a certificate need not be issued under the adjudication proceedings provided for in [85-2-236](#).

(6) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if:

(a) the maximum capacity of the impoundment or pit is less than 15 acre-feet;

(b) the appropriation is less than 30 acre-feet a year;

(c) the appropriation is from an ephemeral stream, an intermittent stream, or another source other than a perennial flowing stream; and

(d) the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger.

(7)(a) Within 60 days after constructing an impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. Subject to subsection (7)(b), upon receipt of a correct and complete application for a stock water provisional permit, the department shall automatically issue a provisional permit. If the department determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit subject to terms, conditions, restrictions, or limitations that it considers necessary to protect the rights of other appropriators.

(b) If the impoundment or pit is on national forest system lands, an application is not correct and complete under this section until the applicant has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the permit.

(8) A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the department under [85-2-113](#).

(9) Pursuant to [85-20-1902](#), the provisions of this section do not apply within the exterior boundaries of the Flathead Indian reservation.

History: En. Sec. 16, Ch. 452, L. 1973; amd. Sec. 2, Ch. 238, L. 1974; amd. Sec. 8, Ch. 485, L. 1975; amd. Sec. 4, Ch. 416, L. 1977; amd. Sec. 1, Ch. 470, L. 1977; R.C.M. 1947, 89-880(5), (7); amd. Sec. 1, Ch. 30, L. 1981; amd. Sec. 1, Ch. 160, L. 1981; amd. Sec. 1, Ch. 357, L. 1981; amd. Sec. 8, Ch. 448, L. 1983; amd. Sec. 1, Ch. 499, L. 1985; amd. Sec. 2, Ch. 535, L. 1987; amd. Sec. 1, Ch. 432, L. 1989; amd. Sec. 13, Ch. 769, L. 1991; amd. Sec. 4, Ch. 805, L. 1991; amd. Sec. 9, Ch. 629, L. 1993; amd. Sec. 447, Ch. 418, L. 1995; amd. Sec. 1, Ch. 250, L. 1999; amd. Sec. 3, Ch. 78, L. 2001; amd. Sec. 3, Ch. 161, L. 2005; amd. Sec. 5, Ch. 213, L. 2007; amd. Sec. 1, Ch. 86, L. 2009; amd. Sec. 1, Ch. 96, L. 2011; amd. Sec. 1, Ch. 97, L. 2011; amd. Sec. 2, Ch. 421, L. 2013; amd. Sec. 8, Ch. 294, L. 2015; amd. Sec. 1, Ch. 455, L. 2015; amd. Sec. 1, Ch. 243, L. 2017; amd. Sec. 2, Ch. 264, L. 2017; amd. Sec. 1, Ch. 561, L. 2023.

2023-2024 DNRC Comprehensive Water Review Stakeholder Policy Questions, Concerns, Recommendations

1. Water Storage

A holistic solution that addresses public and institutional concerns related to water planning, growth, and permit-exempt uses of groundwater in Montana must explore the optimization of both natural and built water storage to expand access to water and mitigate the impacts of drought. Enhancing water storability and exploring more innovative storage solutions are central topics that have long influenced the development of drought, flood, and other statewide planning strategies. The 2015 Montana State Water Plan recognized that large, traditional (built) water storage projects are "expensive to plan, construct, operate, and maintain" that are "limited by the availability of suitable locations, cost, public support, the need to mitigate environmental impacts, and the limited legal and physical availability of water." This plan endorsed ways to maximize built storage capacity through rehabilitation and modifying reservoir operation policies, as well as integrating natural storage to benefit water supplies and ecosystems. As described in the 2023 Montana Drought Management Plan (Drought Plan), building drought resilience in Montana will require the implementation of a broad range of proactive adaptive strategies to help water users prepare for future drought, and state agencies can play an essential role in providing tools and resources for planning, outreach, and project implementation. The Water Supply, Storage, and Delivery stakeholder-derived recommendations described in the Drought Plan received broad and enthusiastic support at every level, and while full implementation of the recommendations in this category will require long-term investment, moving forward with the initial steps is a clear near-term priority. Montana is a diverse state demographically, geographically, and ecologically, and a one-size-fits-all storage approach does not exist. Effective storage solutions will need to consider all beneficial uses of water equally while recognizing that prevention of adverse effect may require greater regulation of some solutions and less oversight for others. The water storage recommendations described below reflect the ideas generated by the DNRC Comprehensive Water Review Stakeholder Working Group over the course of nearly a year's worth of monthly all-day meetings and monthly interim sub-working group meetings. Each recommendation action item is intended to respond to the water storage-specific challenges illuminated by stakeholders.

Water Storage Recommendations:

1. What, if any, are the limitations in federal law for implementing the State Water Plan? Do current statutes reflect the needs of today? Federal limitations to State Water Plan implementation will be compiled and reviewed.
2. Issues and limitations exist related to changing water rights with places of use that are encompassed within service areas (e.g., municipalities, irrigation districts, water & sewer districts, etc.) that must be addressed, along with an exploration of the limitations related to water storage changes or additions in service areas. Places of use that are encompassed by service areas have unique considerations in that water use may be flexibly moved around for different purposes within the service area boundaries. When needed, adequate access to stored water is crucial for delivering water for the varied uses and to water users located within service area boundaries. An informational guidance document will be drafted to address service area storage limitations and update public and internal procedural guidance for reviewing/preparing changes to water rights with service area places of use.
3. Existing water policy does not allow secondary use of a water right for storage purposes (e.g., water losses during conveyance along a ditch that are purposefully infiltrated to groundwater). Some secondary uses of water should be reviewed as possible sources of mitigation water, or water that is marketed for mitigation. Does the state need new policies that allow for off-stream storage options or 'buckets' to hold water for a predetermined period of time for later use? If so and if a water right change authorization is required, should there be fewer roadblocks to allow for this? Options should be explored for allowing some entities like irrigation districts and ditch companies to store water without undergoing the water right change process or consider possible obstacle reductions for different entities and/or storage solutions.

4. How can the DNRC address the ownership and allocation of new and existing stored water for all beneficial uses? Other states have statutory provisions that enable the institutional management of stored groundwater; are similar statutory provisions appropriate for Montana? If so, which ones? Existing [aquifer storage/dominion and control statutes in Colorado](#) should be reviewed.
5. Storage is especially difficult in basins that are closed to new appropriations of water; should exceptions for storing water during high spring runoff events in large river systems or in groundwater focus areas and closed basins be utilized more where in statute and added when modifying statute? Such exceptions may require legal availability analyses for the storage of new water while considering trigger streamflows and exceedance probabilities.
6. The state does not currently recognize aquifer recharge with the sole intent of increasing or improving storability as a beneficial use of water unless it is specifically required to mitigate other new uses. The storage of water with nature-based solutions or known aquifer recharge methodologies should be explored as a standalone beneficial use that is not directly tied to the mitigation of new water uses elsewhere due to the known human and environmental benefits associated with these methods. Groundwater restoration policy could also be explored.
7. With regard to natural water storage, questions arise regarding ownership of water stored with nature-based methods and infrastructure (e.g., beaver dam analogs to slow the flow of surface water and promote groundwater infiltration, or floodplain & wetland restoration to reconnect streams to their floodplains which also promotes aquifer recharge), the level of 'control' required in physically managing the source of stored water, and under what circumstances natural water storage projects may require a water right change or beneficial use permit application. [Existing wetland restoration water right policies](#) should be reviewed, updated, and clarified, and additional considerations for other types of nature-based water storage methods will be explored.
8. What, if any, are the policy options for transferring existing federal contracts (e.g., Hungry Horse, Canyon Ferry contract water) to the state to provide mitigation water for future development? *Can* the state consider federal facilities for mitigation water contracting? Could federal facilities be transferred to the state?

2. Mitigation

Mitigation is required for new water right permits and water right changes when water is not legally available. Legal availability is equal to the total legal demand of water (i.e., the sum of water right flow rates in a surface or groundwater source) subtracted from the physical availability of water. Mitigation water is required to offset any net depletions to surface water that may result from either new beneficial water use permits for (surface or ground) water, or changes to surface or ground water rights that are tributary to surface water sources. Net depletion is considered to be any reduction in the flow rate or monthly timing of depletion to surface water, or a change in the location of depletions of surface water. All three types of net depletion must be offset by mitigation water when surface water is not legally available. Mitigation water may be secured by changing the beneficial use of an existing water right to offset a proposed new use of water or net depletion; however, this approach presents challenges in that existing water rights proposed to be changed to mitigation purposes must have priority dates of sufficient seniority to adequately and reliably offset the proposed new use of water during the time when mitigation is needed, and in the location where it is needed. An additional challenge is that mitigation water is often needed to offset new uses of water or net depletions to surface water that occur outside of the irrigation season, yet many water rights of sufficient seniority are used for irrigation purposes with only seasonal periods of use; thus, water rights with seasonal periods of use (e.g., April 15 to October 10) cannot be used to mitigate net depletions to or new uses of surface water that occur outside of their decreed or permitted periods of use (e.g., October 11 to April 14).

Mitigation Recommendations:

DNRC recommends formation of a technical working group to further explore the challenges and potential solutions to making mitigation a more effective tool to meet the needs of a growing state.

3. Municipalities

Municipal water rights are different than most others in that they have places of use comprised of a "service area" within which the redistribution of water does not require pre-approval by DNRC. Other types of water right-owning entities (e.g., irrigation districts, ditch companies) also have service areas; however, the nature of the municipal beneficial use listed on municipal water rights is unique because municipal water encompasses a wide variety of uses such as domestic, commercial, fire protection, street cleaning, industrial, and recreation, among others. Water rights listing a "municipal" purpose can be held by municipalities, as well as unincorporated cities and towns and water and sewer districts. The municipal purpose cannot be used by individual water right owners regardless of the number of purposes on their water rights (i.e., a rancher would not have a municipal water right even though he/she may have a water right for domestic, lawn and garden, stock, and irrigation uses - those purposes must be individually listed on their water right). Municipalities may own any type of water right for any purpose including and other than "municipal", and if a municipality owns water rights for specific purposes, those water rights may only be used for the identified purposes.

Municipalities cannot always predict where and at what rate future development within or directly outside of their service areas will occur, and recurrently changing their service area places of use to accommodate new or anticipated development is challenging, especially in the face of unpredictable future water availability. Meeting future water demand for growing populations while preparing for the impacts of future drought were ongoing challenges described by municipal water users interviewed during development of the Drought Plan. According to [Drought Vulnerability Assessment](#) completed as part of the Drought Plan, cities with larger populations, higher rates of growth, and municipal dependence on surface water tend to have higher vulnerability scores.

As described in Section 2 of the Drought Plan, a holistic drought management approach requires the identification and implementation of proactive programs, policies, and strategies that will reduce future drought impacts. This preparedness (or "drought adaptation") is key to building resilience at local, regional, and state scales, with effective adaptation strategies differing by scale. Increasing flexibility and options for municipal water restrictions and evaluating strategies to increase conservation through incentives or regulations can help local governments implement programs and strategies more effectively. During Drought Plan development, water users who self-identify as members of the community development and municipal water supply sector expressed support for water (especially groundwater) supply monitoring as important parts of community planning and water management. Most local governments, however, do not have the funding or capacity to conduct extensive groundwater monitoring without state or federal support. Water use measurement, monitoring, and reporting are limited, as is state oversight, and a platform for the public to readily access water supply measurements is essentially nonexistent. The extensive gap between actual water use and public access to water use records - along with potentially extensive opposition to measurement requirements and monitoring - has made determining water availability and adverse effect difficult.

The municipal use recommendations described here reflect the ideas generated by the DNRC Comprehensive Water Review Stakeholder Working Group over the course of nearly a year's worth of monthly all-day meetings and monthly interim sub-working group meetings. Each recommendation listed below is intended to respond to the municipality-specific water resource and water right challenges discussed by and amongst working group stakeholders.

Municipal Water Use Recommendations:

1. A streamlined process for changing municipal water rights to address municipal service area expansion could be accomplished legislatively. Such a solution would limit streamlined change processes to 1) municipality service areas, 2) entities operating a public water supply exclusively, entities with separate statutory authority to annex and incorporate municipal growth, entities with

established growth plans, or 3) other statutory criteria specifying use thresholds (e.g., water right volume).

2. To promote water conservation and system efficiency, legislation may be drafted to mirror or amend existing statute which states that upgrades to irrigation methods do not require prior authorization by DNRC as irrigation method upgrades are not considered changes to water use (§ 85-2-102(7)(b), MCA).
3. Isolated water rights that are disconnected from municipalities and municipal water supplies via annexation need to be addressed. Legislation can be drafted to stall questions of non-use or abandonment of such water rights until they can be changed and brought into compliance with the Montana Water Use Act.
4. Statutes and administrative rules concerning municipal intent to appropriate water for future use (i.e., municipal water reservations) need to be clarified to 1) distinguish between pre- and post-July 1, 1973, uses of water within municipalities, 2) specify existing and anticipated water use volumes and service area changes, and 3) reduce speculation when quantifying and qualifying anticipated growth.
5. Replacement well legislation can be amended to increase flow rate limitations, clarify and improve administrative rules defining "same aquifer", and allow for the re-drilling of wells within the same ¼ ¼ section, so long as they are drilled in the same aquifer.
6. Points of friction between DEQ water supply and DNRC water right regulations must be identified (e.g., increased 'emergency' flows of water required for groundwater public water supply systems as municipal populations grow, water rights dictating certain wastewater discharges that differ from actual changes in Montana Pollutant Discharge Elimination System [MPDES] permitting of discharge location and amount, or cistern and water tank storage regulation).
7. Stakeholders expressed general support of measurement of all uses of surface and groundwater. This scale of water use measurement and monitoring requires access to operable measuring devices, even in sources with no appointed water commissioners. Recommended solutions that could be introduced in phases include identifying initial water right types and sources where monitoring is most needed (based preliminarily on water commissioner records), improving accessibility to water measurement devices and automatic dataloggers, and improving water use records reporting and technology.

4. Notification and outreach plan for exempt wells

The DNRC Comprehensive Water Review Stakeholder Working Group spent significant time considering how the use of permit exemptions currently impacts water planning and growth in Montana and whether policy changes are needed moving forward. The group developed a number of policy recommendations, including one providing for the formation of Controlled Groundwater Areas (CGWAs) within which the use of exempt wells would be greatly restricted. Successful implementation of this proposal would require clear and effective public education on the boundaries of and restrictions associated with each CGWA. DNRC recommends development of an outreach plan to inform landowners and developers of how they may be impacted. This effort should leverage key partners including well drillers, realtors, title companies, city/county planners, and partner agencies. In addition to general outreach (newsletters, mailers, digital campaigns), the strategy should target multiple common development touchpoints (e.g., property purchase, project planning, subdivision review).