



Permit and Change Process Overview

Introduction

DNRC has reviewed and issued Beneficial Water Use Permits and Change Authorizations since the inception of the Water Use Act in 1973. While the criteria the Applicant must prove have remained the same, the application process and level of analysis has changed throughout time. The application process for a Permit or Change was overhauled through HB 114, which is in effect as of January 1, 2024. All applications for a Beneficial Water Use Permit or Water Right Change Authorization received on or after January 1, 2024, will be subject to HB 114, along with the Administrative Rules adopted by the Department to enable this process.

Whether you are brand new to permits and changes, or are looking to understand how the process has changed as a result of HB 114, this guide will help provide some basic information. Note that applications received prior to January 1, 2024 will be processed using the statutes and rules in place at the time of application receipt – therefore the process detailed in this document may not apply to your application. As always, if you have any questions about application processes or water rights in general, please contact your local Water Resources Regional Office. See the last page of this document for contact information.

Purpose of Permit and Change Process

The Legislature has codified specific criteria that an Applicant must prove to be granted a Beneficial Water Use Permit (a permit for a new appropriation of water that does qualify for a permit exception) or Change Authorization (an authorization to change the point of diversion, place of use, purpose, or place of storage of an existing water right). These statutory criteria are:

- Permit (§85-2-311, MCA)*
 - Physical Availability
 - Legal Availability
 - Adverse Effect
 - Adequacy of Diversion
 - Beneficial Use
 - Possessory Interest
- Change (§85-2-402, MCA)*
 - Adverse Effect (with consideration to Historical Use)
 - Adequacy of Diversion
 - Beneficial Use
 - Possessory Interest

*A Water Quality criterion also must be proven if valid objections are received; certain applications are also subject to a Reasonable Use Criterion.

Process Steps

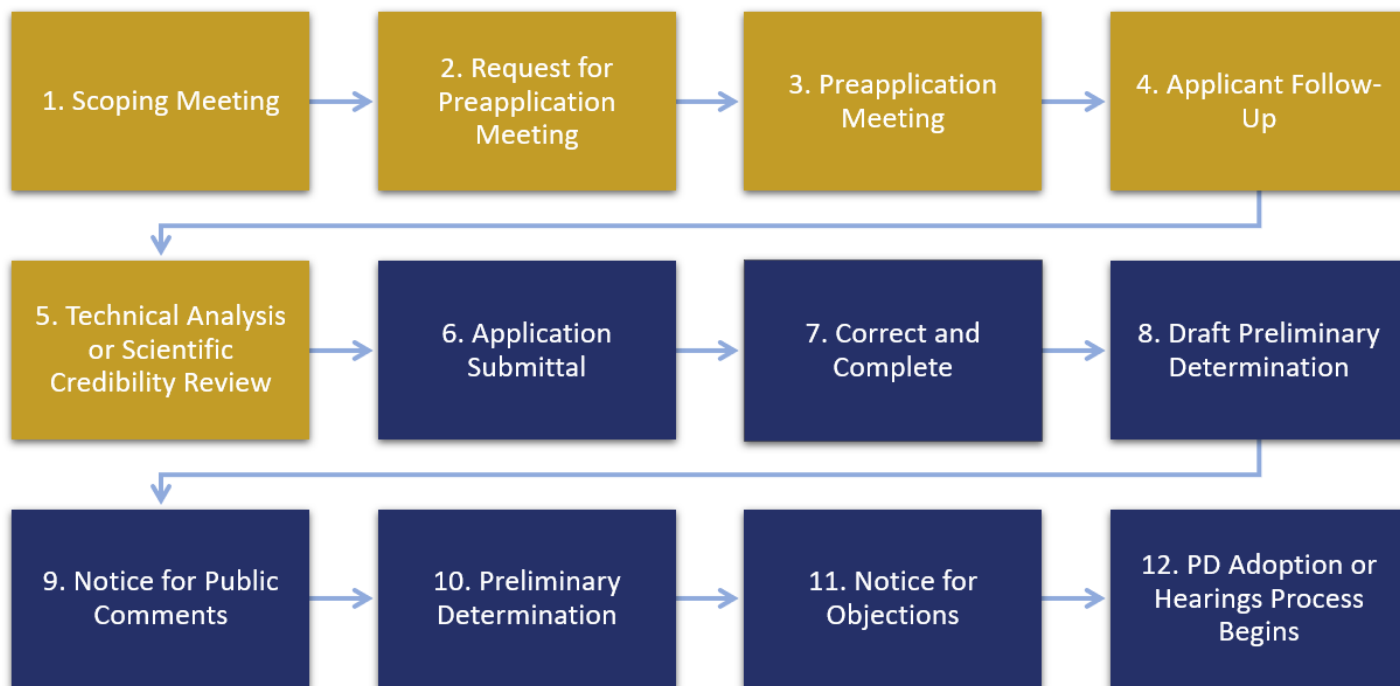


Figure 1. Basic steps in the permit and change application process. Gold steps are optional. Each step is summarized below.

1. Scoping Meeting

Applicants are highly encouraged, though not required, to meet with the Department for a preliminary scoping meeting to discuss their working plans for an application for a permit or change. With HB 114, a preapplication meeting is now a more formal part of the process and a project proposal should be very well-established before requesting a preapplication meeting. If you are seeking Department guidance about your initial project brainstorming and research or are wanting to gain a better understanding of the application process, schedule a scoping meeting with your local Regional Office.

2. Request for Preapplication Meeting (ARM 36.12.1302)

Applicants electing to complete the preapplication process must submit a written request for a preapplication meeting, identifying several key elements of their proposed project. This information will allow the Department to perform some preliminary research and prepare for the preapplication meeting. An optional form is available on the Department website for Applicants to use for their preapplication meeting request.

Applicants participating in the preapplication process have increased certainty early in the application process and will also enjoy a discounted filing fee and expedited application processing timelines. During the preapplication period, the Department either completes the necessary technical analyses or assesses the scientific credibility of applicant-provided technical analyses. Applicants who do not complete the preapplication process will receive the Department's technical analyses or scientific credibility review of Applicant-submitted technical analyses along with the Draft Preliminary Determination.

3. Preapplication Meeting (ARM 36.12.1302)

During the preapplication meeting, Applicants will share the full details of their project and DNRC staff will share any information they were able to gather in advance based on the submission of the preapplication meeting request – this includes preliminary information about the location of depletions to surface water from

groundwater appropriations and the source for historical and proposed return flows from irrigation. DNRC will document the project details on the Preapplication Meeting Form, identifying any missing information that the Applicant will need to submit within the 180-day period following the preapplication meeting. The Applicant will also elect whether DNRC or the Applicant will complete the technical analyses required for the project, as listed in ARM 36.12.1303 and further detailed in the Technical Analyses Guide.

4. Applicant Follow-Up (ARM 36.12.1302)

Following the preapplication meeting, an Applicant has 180 days to submit any follow-up information identified on the Preapplication Meeting Form, and to submit the technical analyses if they have elected to complete them. The \$500 fee for the preapplication meeting is due at this time. Note that this \$500 is credited to the fee for an application based on the same project; see more information about the fee structure below.

5. Technical Analyses or Scientific Credibility Review (ARM 36.12.1302 and 1303)

Upon receipt of the Applicant's follow-up information for the Preapplication Meeting Form, the Department will ensure all required information has been submitted and is adequate and then will complete the technical analyses or scientific credibility review of Applicant-submitted technical analyses. The Department has 45 days from the date of form receipt to deliver either the analyses or credibility review to the Applicant.

6. Application Submittal (ARM 36.12.1401 for Permits; 1501 for Changes)

For Applicants not completing the preapplication process, submittal of the application (Form 600 for permits or Form 606 for changes) may be the first step in their process, though Applicants are encouraged to participate in a scoping meeting even if they do not pursue the preapplication process. Applications submitted without a preapplication meeting having occurred will be subject to the full application fee and longer processing timelines. DNRC will complete the technical analyses unless the Applicant submits technical analyses with their application – either the Department-completed technical analyses or scientific credibility review will be delivered to the Applicant along with the Draft Preliminary Determination.

For Applicants who completed the preapplication process, an application form (Form 600 for permits or Form 606 for changes) will still need to be submitted as the Applicant must confirm the details of their application on which the statutory criteria will be assessed. An application will not qualify for the discounted filing fee or expedited timelines if the application is not filed within 180 days of completion of the technical analyses or scientific credibility review, or if any element of the proposed application is changed since the completion of the preapplication meeting form and follow-ups (ARM 36.12.1302(6)).

7. Correct and Complete (§85-2-302, MCA)

DNRC will review the submitted application and send the Applicant a deficiency letter if the application is not correct and complete. If a deficiency letter is sent, the Applicant must respond to the letter within 120 days. A determination that an application is correct and complete does not mean that the application will necessarily be granted, only that the Applicant has supplied all necessary information for the Department to assess the statutory criteria. If the application is not made correct and complete even after the deficiency response, it must be terminated by the Department.

8. Draft Preliminary Determination (§85-2-307, MCA)

The Department will assess whether the Applicant has proven the statutory criteria applicable for the proposed application and will prepare a decision document known as a Draft Preliminary Determination (PD). The decision document will detail the Department's draft decision to grant, grant with modifications, or deny the application. DNRC will send the Draft PD to the Applicant, who will have the opportunity to request an extension of time to submit additional information, if desired. If the decision is a denial, the Applicant will not have the opportunity to pursue a show cause hearing unless they first request an extension of time to submit additional information. The Department may revise its Draft PD based on the additional information submitted.

9. Notice for Public Comments (§85-2-307, MCA)

The Department will prepare a notice of opportunity to provide public comment on a Draft PD to grant or grant with modifications (or updated Draft PD to grant or grant with modifications if revised based on additional information provided during an extension of time, above). The notice will be published in a local newspaper, be posted on the Department website, and be mailed to a list of potentially interested entities. The public comment period will last for 30 days and commenters will need to address how the Draft PD does not adequately address one or more of the statutory criteria. If no public comments are received, the Draft PD is adopted as final. The Department's decision will be noticed for the opportunity for objections only if one or more public comments are received.

10. Preliminary Determination (§85-2-307 and -308, MCA)

If one or more public comments are received, the Department will consider the public comments and issue a non-draft Preliminary Determination (PD) within 30 days of the public comment deadline. If the PD contains a decision to deny, a show cause hearing will be held. If the PD contains a decision to grant or grant in modified form, the Department will provide notice of the opportunity to object to the PD.

11. Notice for Objections (§85-2-308, MCA and ARM 36.12.117)

The Department will provide notice of the opportunity to object to the PD during a 30-day objection period. Again, the notice will be published in a local newspaper, be posted on the Department website, and be mailed to a list of potentially interested entities. An entity who submitted a public comment will be added to the mailing list if they were not already included. Objections may be filed only about issues already identified in a public comment.

12. PD Adoption or Hearing Process Begins (§85-2-307 and -310, MCA)

If no valid objections are received, the PD is adopted as final, and the application process is concluded. If valid objections are received, the DNRC Office of Administrative Hearings will undertake the contested case hearings process, pursuant to §85-2-310, MCA.

Application Processing Timelines

| Action | Deadline <u>with</u> Preapplication | Deadline <u>without</u> Preapplication |
|--|--|---|
| Application deemed correct & complete or deficiency letter sent (after application receipt) | 15 business days | 30 business days |
| Correct & complete determination or application termination (after receipt of a deficiency response) | 30 days | 30 days |
| Draft preliminary determination sent to applicant (after correct & complete) | 60 days | 120 days |

Fees

| Form | Fee <u>with</u> Preapplication ((\$500 of fee specified will be due during preapplication period)) | Fee <u>without</u> Preapplication |
|--------------------------------------|---|-----------------------------------|
| Permit application in a closed basin | \$1600 | \$2900 |
| Permit application in an open basin | \$1200 | \$2500 |
| Change application | \$1500 | \$2500 |

Key Documents

- Forms 600P & 606P: Preapplication Meeting Forms for either a Permit (600P) or a Change (606P)
- Forms 600 & 606: Application Forms for a Permit (600) or Change (606)
- Technical Analyses Guide
 - A list of technical analyses required for each application type, along with information about DNRC Standard Practices, and the Scientific Credibility Review process for Applicants completing their own technical analyses.
- Form 653: Variance Request Form
 - Use this form to submit a variance request from the requirements in ARM 36.12.121 or 36.12.1702 (ARM 36.12.123).
- Form 655: Application Amendment Form
 - Use this form to modify an element of a permit or change application (ARM 36.12.1401).
- Form 654: Public Comment Form
 - Use this form to submit a public comment on how a draft Preliminary Determination does not adequately address one or more of the statutory criteria (§85-2-307, MCA).
- Form 611: Objection Form
 - Use this form to object to a Preliminary Determination; objections are limited to issues already identified in public comments (§85-2-308, MCA).
- Permit and Change Manuals
 - The Permit and Change manuals provide detailed information about Department application review and processing.

Basic Processing Steps - Permit or Change *with* Preapplication Meeting

| Timelines | Applicant | DNRC |
|---------------------------------------|---|--|
| no timelines | <div style="border: 1px solid black; padding: 5px; margin-bottom: 10px;">Applicant submits written request for preapplication</div> | <div style="border: 1px solid black; padding: 5px; margin-bottom: 10px;">Scoping meeting occurs (optional).</div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 10px;">DNRC reviews request and schedules meeting, prepares preliminary research.</div> <div style="border: 1px solid black; padding: 5px;">Preapplication meeting occurs, required follow-up items are identified.</div> |
| 180 days | <div style="border: 1px solid black; padding: 5px;">Applicant gathers follow-up info, completes form and follow-up page, submits with fee and technical analyses, if completing themselves.</div> | |
| 45 days | | <div style="border: 1px solid black; padding: 5px;">DNRC reviews form for completeness (first 5 days); completes technical analyses or scientific credibility review.</div> |
| 180 days | <div style="border: 1px solid black; padding: 5px;">Applicant submits application.</div> | |
| 15 business days | | <div style="border: 1px solid black; padding: 5px;">DNRC first reviews for form acceptance and then for deficiencies to determine if application is correct and complete. If deficiencies are present, DNRC sends deficiency letter.</div> |
| 120 days | <div style="border: 1px solid black; padding: 5px;">Applicant submits deficiency response.</div> | |
| 30 days | | <div style="border: 1px solid black; padding: 5px;">DNRC deems Application correct and complete or terminates it.</div> |
| 60 days | | <div style="border: 1px solid black; padding: 5px;">DNRC writes Draft Preliminary Determination (PD) and sends to Applicant; publishes Environmental Assessment.</div> |
| 15 business days | <div style="border: 1px solid black; padding: 5px;">Applicant can request an extension of time to submit additional information.</div> | |
| Timelines included in applicable step | | <div style="border: 1px solid black; padding: 5px; margin-bottom: 10px;"> <p>If no extension is requested, a Draft PD to grant or grant in modified form is publicly noticed for 30-day public comment period. A Draft PD to deny is adopted as final.</p> <p>If extension is requested, DNRC may grant up to 180 days. Once information is submitted by applicant, DNRC updates PD within 60 days. An updated Draft PD to deny goes to a show cause hearing. An updated Draft PD to grant or grant in modified form is publicly noticed for 30-day public comment period.</p> </div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 10px;"> <p><u>If no comments received</u>, DNRC issues application and adopts PD as final.</p> <p><u>If public comments are received</u>, DNRC reviews and considers them; issues a non-draft PD. A PD to deny goes to a show cause hearing. A PD to grant or grant in modified form is publicly noticed for a 30-day objection period.</p> </div> <div style="border: 1px solid black; padding: 5px;"> <p><u>If no objections are received</u>, DNRC issues application and adopts PD as final.</p> <p><u>Objections received</u> are reviewed for validity and a deficiency letter may be sent.</p> <p><u>If objections are not valid or are unconditionally withdrawn</u>, DNRC issues application and adopts PD as final.</p> <p><u>If objections are valid</u>, application is transferred to Hearings Unit.</p> </div> |

Basic Processing Steps - Permit or Change *without* Preapplication Meeting

| Timelines | Applicant | DNRC |
|---------------------------------------|--|--|
| | | Scoping meeting occurs (optional). |
| 30 business days | Applicant submits application. | <p>DNRC first reviews for form acceptance and then for deficiencies. If the Applicant submitted their own technical analyses, DNRC reviews to ensure all required analyses are submitted for the application type.</p> <p>If deficiencies are present, DNRC sends deficiency letter. If no deficiencies are present, DNRC deems the application correct and complete.</p> |
| 120 days | Applicant submits deficiency response. | |
| 30 days | | DNRC deems Application correct and complete or terminates it. |
| 120 days | | <p>DNRC completes technical analyses or scientific credibility review, writes Draft Preliminary Determination (PD) and sends it to Applicant along with the technical analyses or scientific credibility review. DNRC publishes the Environmental Assessment.</p> |
| 15 business days | Applicant can request an extension of time to submit additional information. | |
| Timelines included in applicable step | | <p>If no extension is requested, a Draft PD to grant or grant in modified form is publicly noticed for 30-day public comment period. A Draft PD to deny is adopted as final.</p> <p>If extension is requested, DNRC may grant up to 180 days. Once information is submitted by applicant, DNRC updates PD within 60 days. An updated Draft PD to deny goes to a show cause hearing. An updated Draft PD to grant or grant in modified form is publicly noticed for 30-day public comment period.</p> <p><u>If no comments received</u>, DNRC issues application and adopts PD as final. <u>If public comments are received</u>, DNRC reviews and considers them; issues a non-draft PD. A PD to deny goes to a show cause hearing. A PD to grant or grant in modified form is publicly noticed for a 30-day objection period.</p> <p><u>If no objections are received</u>, DNRC issues application and adopts PD as final. <u>Objections received</u> are reviewed for validity and a deficiency letter may be sent. <u>If objections are not valid or are unconditionally withdrawn</u>, DNRC issues application and adopts PD as final. <u>If objections are valid</u>, application is transferred to Hearings Unit.</p> |