

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

In the matter of the adoption of New)
Rule I regarding the Rye Creek Stream) NOTICE OF PUBLIC HEARING
Depletion Zone) ON PROPOSED ADOPTION

To: All Concerned Persons

1. On January 21, 2016, at 10:00 a.m., the Department of Natural Resources and Conservation will hold a public hearing in the Fred Buck Conference Room (bottom floor), Water Resources Building, 1424 Ninth Avenue, Helena, Montana, to consider the proposed adoption of the above-stated rule.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on January 19, 2016, to advise us of the nature of the accommodation that you need. Please contact Millie Heffner, Montana Department of Natural Resources and Conservation, P.O. Box 201601, 1424 Ninth Avenue, Helena, MT 59620, telephone (406) 444-0581, fax (406) 444-0533, e-mail mheffner@mt.gov.

3. The department proposes to adopt the following rule:

NEW RULE I RYE CREEK STREAM DEPLETION ZONE (1) There is designated a Rye Creek Stream Depletion Zone. Rye Creek Stream Depletion Zone means an area of approximately 378.66 acres or 0.59 square miles located approximately ten miles southeast of the town of Darby, Montana in Ravalli County and is generally described as follows:

(a) Beginning approximately 0.13 miles west of the intersection of Dugout Gulch Road and Rye Creek Road in the SE1/4 of Section 26, Township 3N, Range 20W, the stream depletion zone extends 700 feet on either side of Rye Creek eastward to the intersection of Rye Creek and North Fork Rye Creek roads. From the intersection of North Fork Rye Creek and Rye Creek roads the stream depletion zone extends 700 feet on either side of Rye Creek approximately 0.63 miles east on Rye Creek Road, terminating on United States Forest Service property in the SE1/4 of Section 25, Township 3N, Range 20W. Extending 700 feet on either side of the North Fork of Rye Creek the stream depletion zone extends approximately 1.21 miles north on North Fork Rye Creek Road from its intersection with Rye Creek Road to its terminus on United States Forest Service property in the S1/2 of Section 24, Township 3N, Range 20W. The legal land descriptions are in the following table:

Quarter Section	Section	Township	Range
SESE	26	3 North	20 West
S1/2	25	3 North	20 West
NW	25	3 North	20 West
S1/2	24	3 North	20 West

(2) A map of the area within the Rye Creek Stream Depletion Zone described in (1) is posted at <http://dnrc.mt.gov/divisions/water/water-rights/stream-depletion-zones/rye-creek>.

(3) Within the Rye Creek Stream Depletion Zone, ground water appropriations that are exempt from permitting are subject to statutory restrictions and provisions set forth in 85-2-306 and 85-2-381, MCA.

AUTH: 85-2-380, MCA

IMP: 85-2-380, MCA

REASONABLE NECESSITY: 85-2-380, MCA, authorizes the department to designate stream depletion zones. A petition to designate a stream depletion zone was filed with the department by Randy Overton of Water Source LLC on May 15, 2015, on behalf of Jeffrey and Nancy Ince, Leonard Skarvan, and J.H. Tenzer. The petition was signed by water right owners who have water rights consisting of 15 percent of the flow rate of the surface water rights in Rye Creek in the area estimated to be affected. A hydrogeologic assessment was completed by a hydrogeologist, and the zone is located in a basin closed pursuant to 85-2-344, MCA. All the requirements of 85-2-380(1) and (2), MCA, were met by the petition requiring the department to initiate rulemaking.

A determination to initiate rulemaking proceedings was issued by the department on October 2, 2015. The proposed rule establishes the Rye Creek Stream Depletion Zone consistent with the requirements set forth in 85-2-102(23) and 85-2-380, MCA. Within the Rye Creek Stream Depletion Zone, ground water appropriations that are exempt from permitting are subject to statutory restrictions and provisions set forth in 85-2-306 and 85-2-381, MCA.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted in writing to Millie Heffner, Department of Natural Resources and Conservation, P.O. Box 201601, 1424 Ninth Avenue, Helena, MT 59620; fax (406) 444-0533; or e-mail mheffner@mt.gov, and must be received no later than 5:00 p.m. on January 21, 2016.

5. David Vogler, Department of Natural Resources and Conservation, has been designated to preside over and conduct the public hearing.

6. An electronic copy of this notice of public hearing on proposed adoption is available through the department's web site at <http://www.dnrc.mt.gov>. The department strives to make the electronic copy of this notice of public hearing on proposed adoption conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources, or a combination thereof. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Lucy Richards, P.O. Box 201601, 1625 Eleventh Avenue, Helena, MT 59620; fax (406) 444-2684; e-mail lrichards@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption of the above-referenced rule will not significantly impact small businesses.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

/s/ John E. Tubbs

John Tubbs

Director

Natural Resources and Conservation

/s/ Brian Bramblett

Brian Bramblett

Rule Reviewer

Certified to the Secretary of State on December 14, 2015