

MONTANA ASSOCIATION OF CONSERVATION DISTRICTS
QUESTIONS AND ANSWERS ABOUT CHARGING FEES FOR 310 PERMITS

March 2009

1. Are conservation districts able to charge fees for 310 permits?

Answer: Yes. While, the 310 law itself does not specifically authorize conservation districts to charge fees, the authority to charge fees exists under conservation district law. MCA 76-15-501(3), gives supervisors authority to “establish and collect rates, fees, tolls, rents, or other charges for the use of facilities or **for services or materials provided.**” In 1999, the conservation district law (76-15-403(9)) was amended giving conservation districts the authority to execute its 310 duties using the procedures of conservation district law, which includes charging fees.

2. Does DNRC or County government need to give permission for a CD to enact a fee?

Answer: No. A conservation district is a political subdivision of the state. As a stand-alone governmental entity, a conservation district is not required to obtain permission from either the Department of Natural Resources and Conservation (DNRC) or county government in order to establish and collect fees for the implementation or administration of the 310 law. A conservation district must, however, provide DNRC’s Conservation Districts Bureau with a copy of any rules or amended rules.

3. Why haven’t CDs charged fees in the past?

Answer: Conservation districts most likely have in fact been charging “rates, fees, tolls, rents, and charges” for years. For example, conservation district equipment may have been leased for private use and the district received compensation. The more direct question may be why haven’t conservation districts charged fees in the past for the 310 law? There may be as many reasons as there are districts. One major reason may be that conservation districts did not realize they had the power to charge fees for administration of the 310 law.

4. How will the public react if CDs start charging for their services?

Answer: Districts will likely hear objections. In order to address any objections, it is necessary for the service fee to be reasonable and be tied to the service provided. The best way to answer the question is to give the public the opportunity to express their concerns by way of a public process for the adoption of fees.

5. How should CDs determine what level of fee to charge?

Answer: One often used method is to calculate the actual cost based upon the experience of the agency in administering the law. The level of the fee is determined by attempting to estimate a “reasonable fee” that is less than actual cost and yet will not affect the applicant’s willingness to comply with the law. Part of this estimation process occurs by giving the affected public the opportunity to participate and give comment. Whatever method chosen, it needs to be consistent and fair.

6. For what services can CDs charge a fee?

A fee may be charged for any service related to the 310 process, such as the filing of a notice of an application, the processing of an application, the cost of the team inspection, the processing of an emergency application, or the processing of a declaratory ruling. A fee does not have to be required for all services provided under the 310 law. Some CDs may want to charge a fee only for after-the-fact applications (applications received in response to a violation), while others may want to charge only for the projects that need to be inspected.

7. Can CDs use a sliding fee scale for things that are more burdensome and time consuming?

Answer: Yes. The authorizing statute clearly states that the fees must relate to the services provided. If the services provided fluctuate due to “burden” or “time consumption” then a sliding fee schedule is justified.

8. Do all CDs need to charge fees once one CD does?

Answer: No. Each conservation district is a separate political entity just as each county or city is a separate political entity. Each conservation districts is responsible for its own financial management. The fact that one conservation district’s needs require it to enact a fee does not mean that any other conservation district has the same needs.

9. Do all fees need to be the same in every CD in Montana that charges a fee?

Answer: No. Any conservation district charging a fee should base it on the needs and policies of the particular conservation district.

10. Is the word “fee” the proper way to describe this, or should it be called a “charge” or some other word?

Answer: The word “fee” is an appropriate word. The statutory power the conservation district supervisors have is to “establish and collect rates, **fees**, tolls, rents, or other charges for the use of facilities or **for services or materials provided.**” The law also allows a conservation district to denominate a fee as a “charge.” Whether you call it a fee or service charge it is the same thing.

11. What is the specific procedure that CDs must use to enact a fee?

Answer: If a conservation district wants to adopt a fee or fee schedule it should do it through a **rulemaking process**, which would entail the following steps:

- a. Establish a fee schedule.
- b. Draft rules for the consistent application of fees. Have them reviewed for legal content.
- c. Notify the public (use existing rules pertaining to public participation and notification).
- d. Hold public hearing.
- e. Address comments.
- f. Pass resolution to adopt new rules after public concerns are considered, at which point, the rules are adopted.
- g. Begin charging fees.

Check your 310 rules and follow them exactly, but generally, a public hearing notice is required by publication of a notice in a newspaper of general circulation in the area at least twice with an interval of at least 14 days between the two publication dates. The first notice must be published at least 28 days prior to the hearing.

12. Once enacted, how frequently should fees be reviewed?

Answer: Rules may be amended or repealed “from time to time.” Fees should be reviewed for amendment or repeal based on the experiences of the particular conservation district that has enacted the fees.

13. Do CDs need to publish what the fees are in a county or state publication or website?

Answer: No. A conservation district is not statutorily required to publish its rules in any county or state publication or on a website. It is good public policy for a conservation district to work in the open and to publish its rules where the citizens it serves are most likely to look.

Additionally, if any conservation district opts to charge a fee, DNRC must amend the joint application form to reflect that fees may be charged.

14. Should CDs have a fee brochure that lists their fees?

Answer: This is a good idea, but it is not required by law. A brochure is a reasonable document for a conservation district to produce as a convenience to the public.

15. How should CDs interact with their County government and DNRC if the CD decides to charge a fee?

Answer: The conservation districts should use the services available from DNRC to help in the setting of the fee and in processing the adoption of the rules. County government interaction is negligible unless a particular conservation district uses the legal services of the county attorney's office. CDs must provide DNRC with a copy of its rules and amended rules, however.

16. How long will it normally take to enact a fee?

Answer: Once a proposed rule is drafted it should take about 1 – 2 months.

17. How will the charging of a fee affect the 310 set aside from DNRC for administration?

Answer: There is a relationship and to date DNRC has not had a chance to examine all aspects of this issue.

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Answer: The Legislature gave conservation districts the authority to charge fees. However, any increases in or initiations of fees by a government entity are always subject to close scrutiny. MACD suggests that your Board Chair visit with local politicians, including the County Commissioners, to let them know that your district will be seeking public comments on a proposed fee. You should have speaking points that list the reasons that you are considering a fee, what services would be covered, the proposed amount and how it was determined, and your timetable. They may not ask for all those details, but having them ready is prudent.

19. Where can districts look for help if they have other questions about fees?

Answer: Laurie Zeller and Don MacIntyre are well versed in district law. If your district asks a question, please share it with MACD so we can add it to this list. Our intention is to keep this list up to date with additional information as it is available.