

Water Rights and Wetlands FAQs

Recently the State of Montana, Department of Natural Resources and Conservation has received a number of water right applications for wetlands. The following FAQs answer questions that have been raised about those wetland water right applications.

Is a water right required for a wetland?

The Montana Water Use Act, effective July 1, 1973, requires that any manmade diversion, impoundment, ground water withdrawal, excavation, or other artificial means used to put water to a beneficial use must have a water right. There are no exclusions to this requirement.

What if I don't get a water right for a wetland?

A water right for a wetland can be protected through legal methods, including the right to call for water that supplies a wetland, dependent on the priority date and amount of water available. Without a legal water right, the wetland water supply cannot be protected from junior water rights that may be granted which utilize the same source of water.

Why is there an increase in wetland applications being submitted?

Federal, State, and private funds are currently available for wetland development. The Department often sees an increase in water right applications when specific funding becomes available for the type of purpose proposed.

How has the Department processed wetland applications in the past?

Applications received in the past were likely from Federal or State agencies that are charged with wildlife and waterfowl preservation and the water right would have been granted under a wildlife or waterfowl beneficial use and in which the use was quantified.

How does an applicant show that a wetland is a beneficial use of water?

There are 2 components to showing that water use is beneficial. 1) The water use must benefit the appropriator, other persons, or the public and 2) the applicant must show that the flow rate and volume of water applied for are the amounts needed to sustain the beneficial use.

How does an applicant quantify the beneficial use for wetlands?

An applicant can define the quantity of water based on the needs of the wetland, including filling the pool, vegetation needs, evaporation, and overall functionality of the wetland. Typically this would require an expert's opinion.

What is the Department currently doing concerning wetlands?

The Department formed a workgroup to look at whether rules could be adopted to clearly define how a wetland must be designed to be considered a beneficial use of water. The Department has received numerous comments about wetlands and is continuing to look at wetlands issues. However, the Department is not prepared to adopt wetland rules until it has had the opportunity to gather more information. In the meantime, the Department continues to process wetland applications as it has in the past.