

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

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 36.12.101, 36.12.1501, and ) PROPOSED AMENDMENT AND  
36.16.107 and the repeal of ARM ) REPEAL  
36.12.2101 and 36.12.5001 )  
pertaining to Water Rights and Water )  
Reservations )

To: All Concerned Persons

1. On September 20, 2019, at 10:00 a.m., the Department of Natural Resources and Conservation will hold a public hearing in the Ted Doney Conference Room (second floor), Water Resources Building, 1424 Ninth Avenue, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

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 September 13, 2019, 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, Montana 59620-1601; telephone (406) 444-0581; fax (406) 444-0533; email mheffner@mt.gov.

3. The rules proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

36.12.101 DEFINITIONS Unless the context requires otherwise, to aid in the implementation of the Montana Water Use Act and as used in these rules:

(1) through (5) remain the same.

~~(6) "Appropriation right" means any right to the use of water which would be protected under the law as it existed prior to July 1, 1973, and any right to the use of water obtained in compliance with the provisions and requirements of the act.~~

(7) through (88) remain the same but are renumbered (6) through (87).

AUTH: 2-4-201, 85-2-113, 85-2-308, 85-2-370, MCA

IMP: 85-2-113, 85-2-301 through 85-2-319, 85-2-321 through 85-2-323, 85-2-329 through 85-2-331, 85-2-335 through 85-2-338, 85-2-340 through 85-2-344, 85-2-350, 85-2-351, 85-2-360, 85-2-361, 85-2-362, ~~85-2-363~~, 85-2-364, 85-2-368, 85-2-370, 85-2-401, 85-2-402, 85-2-407, 85-2-408, 85-2-410 through 85-2-413, 85-2-418, MCA

REASONABLE NECESSITY: The 2019 Montana Legislature enacted Chapter 59, Laws of 2019 (House Bill 57), amending 85-2-102, MCA, to include a

definition of "appropriation right." Therefore, the definition is no longer necessary in rule. The bill was signed by Governor Bullock on March 18, 2019, and will become effective on October 1, 2019.

36.12.1501 PERMIT AND CHANGE APPLICATION DEFICIENCY LETTER AND TERMINATION (1) remains the same.

~~(2) The priority date on a permit application or the date received on a change application will not be changed if:~~

~~(a) all of the requested information in the deficiency letter is postmarked or submitted to the department within 30 days of the date of the deficiency letter; or~~

~~(b) within 45 days of the date of the deficiency letter, the department has granted an extension. The department may only grant an extension if the applicant submits a written request for an extension within 30 days of the date of the deficiency letter.~~

~~(3) The permit application priority date or change application date received will be changed to the date when the department receives all of the requested information if:~~

~~(a) all of the requested information in the deficiency letter is postmarked or submitted between 31 and 90 days of the date of the deficiency letter; or~~

~~(b) in cases where an extension is granted by the department, 45 to 90 days of the date of the deficiency letter.~~

~~(4)~~<sup>(2)</sup> If all of the requested information in the deficiency letter is not postmarked or submitted within ~~90~~ 120 days of the date of the deficiency letter, the permit or change application will be terminated and the application fee will not be refunded.

AUTH: 85-2-113, MCA

IMP: 85-2-302, MCA

REASONABLE NECESSITY: The 2019 Montana Legislature enacted Chapter 209, Laws of 2019 (Senate Bill 81), amending 85-2-302, MCA, to extend the deficiency response deadline to 120 days. The bill was signed by Governor Bullock on April 30, 2019, and will become effective on October 1, 2019.

36.16.107 CORRECT AND COMPLETE (1) remains the same.

(2) The department shall determine if an application is correct and complete within 180 days after an application has been submitted along with the required application fee. A water reservation application will be deemed correct and complete if a permit applicant's information, required to be submitted by ARM 36.16.104, 36.16.105, 36.16.105A, 36.16.105B, 36.16.105C, and 36.16.106, conforms to the standard of substantial credible information and all the necessary parts of the application form requiring the information, including any required addendums, have been filled in with the required information. A determination that an application is correct and complete is in no way a judgment on the part of the department on the merits of the reservation proposal. The department must notify the applicant in writing of any deficiencies.

(a) and (b) remain the same.

~~(c) The priority date on a water reservation application will not be changed if:~~  
~~(i) all of the requested information in the deficiency letter is postmarked and submitted to the department within 30 days of the date of the deficiency; or~~  
~~(ii) within 45 days of the date of the deficiency letter if the department has granted an extension. The department may only grant an extension if the applicant submits a written request for an extension within 30 days of the date of the deficiency letter.~~

~~(d) The water reservation application priority date will be changed to the date when the department receives all of the requested information if:~~

~~(i) all of the requested information in the deficiency letter is postmarked and submitted between 31 and 90 days of the date of the deficiency letter; or~~  
~~(ii) in cases where an extension is granted by the department, 45 to 90 days of the date of the deficiency letter.~~

~~(e)~~(c) If all of the requested information in the deficiency letter is not postmarked or submitted within ~~90~~ 120 days of the date of the deficiency letter, the water reservation application will be terminated and the application fee will not be refunded.

(3) through (5) remain the same.

AUTH: 85-2-113, MCA

IMP: 85-2-316, 85-2-331, 85-2-605, MCA

REASONABLE NECESSITY: Pursuant to 85-2-316, MCA, "[t]he department shall proceed in accordance with 85-2-302 with regard to any defects in the application [for a state water reservation]." The 2019 Montana Legislature enacted Chapter 209, Laws of 2019 (Senate Bill 81), amending 85-2-302, MCA, to extend the deficiency response deadline to 120 days. The bill was signed by Governor Bullock on April 30, 2019, and will become effective on October 1, 2019.

4. The department proposes to repeal the following rules:

36.12.2101 TEMPORARY LEASE OF APPROPRIATION RIGHT

AUTH: 85-2-113, 85-2-427, MCA

IMP: 85-2-427, MCA

REASONABLE NECESSITY: The rule was adopted to implement 85-2-427, MCA (Section 1, Chapter 236, Laws of 2013) (House Bill 37), which terminated on July 1, 2019, pursuant to Section 4, Chapter 236, Laws of 2013 (House Bill 37).

36.12.5001 APPEALS DEADLINE

AUTH: 85-2-276(9), MCA

IMP: 15-1-216, 85-2-237, 85-2-270, 85-2-271, 85-2-272, 85-2-273, 85-2-276, 85-2-279, 85-2-280, 85-2-281, 85-2-282, 85-2-283, MCA

REASONABLE NECESSITY: The rule was adopted to implement 85-2-276, MCA (Section 5, Chapter 288, Laws of 2005) (House Bill 22), which was repealed by the 2007 Montana Legislature (Section 9, Chapter 319, Laws of 2007) (House Bill 473).

5. 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, Montana 59620-1601; fax (406) 444-0533; email mheffner@mt.gov, and must be received no later than 5:00 p.m., September 20, 2019.

6. David Vogler, Department of Natural Resources and Conservation, has been designated to preside over and conduct this hearing.

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 for which program the person wishes to receive notices. 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 Aliselina Strong, P.O. Box 201601, 1539 Eleventh Avenue, Helena, MT 59620; fax (406) 444-2684; e-mail astrong@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 apply and have been fulfilled. The primary bill sponsors were contacted on July 31, 2019, via email.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ John E. Tubbs  
JOHN E. TUBBS  
Director  
Natural Resources and Conservation

/s/ Barbara Chillcott  
BARBARA CHILLCOTT  
Rule Reviewer

Certified to the Secretary of State August 13, 2019.