

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

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

TO: All Concerned Persons

1. On August 23, 2019, the Department of Natural Resources and Conservation published MAR Notice No. 36-22-204 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 1295 of the 2019 Montana Administrative Register, Issue Number 16.

2. The department has amended and repealed the above-stated rules as proposed.

3. The department has thoroughly considered the comments and testimony received. A summary of the comments received, and the department's responses are as follows:

COMMENT #1: The commenter is concerned that the definition of "appropriation right" that was enacted by the 2019 Montana Legislature in Chapter 59, Laws 2019 (House Bill 57) amending 85-2-102, MCA does not properly consider "vested water rights." The commenter states, in part, "Legislation has not provided in Montana Code a clear, plain meaning definition of Vested Water Right...DNRC through rulemaking should not delete a definition but rather provide a clear plain meaning of the definition..."

RESPONSE #1: As stated in the reasonable necessity in the Notice of Public Hearing on Proposed Amendment and Repeal, the statute now defines "appropriation right" as it pertains to Title 85, chapter 2, MCA. The department should not repeat in rule what is expressly defined in statute or have a conflicting definition of the same term. Therefore, it is necessary to amend the administrative rule. Legislation defining "vested water rights" would be required to address the commenter's concern.

/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 October 8, 2019.