

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 36.16.101 through 36.16.104,	)	REPEAL
36.16.105B, 36.16.106 through	)	
36.16.107A, 36.16.110, 36.16.113,	)	
36.16.114, and 36.16.118 through	)	
36.16.120, and the repeal of ARM	)	
36.16.107B, 36.16.117, 36.16.121,	)	
and 36.16.122 regarding water	)	
reservation rules	)	

To: All Concerned Persons

1. On August 13, 2015, the Department of Natural Resources and Conservation published MAR Notice No. 36-22-181 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 1108 of the 2015 Montana Administrative Register, Issue Number 15.

2. The department has amended ARM 36.16.101 through 36.16.104, 36.16.105B, 36.16.106 through 36.16.107A, 36.16.110, 36.16.113 through 36.16.114, and 36.16.118 through 36.16.120 as proposed.

3. The department has repealed ARM 36.16.107B, 36.16.117, 36.16.121, and 36.16.122 as proposed.

4. The department has thoroughly considered the one comment received. No oral testimony was received at the September 10, 2015, public hearing. A summary of the comment received and the department's response is as follows:

COMMENT 1:

Fish, Wildlife and Parks (FWP) is concerned the existing rule and the revised rule fail to place the appropriate burden of proof on the party seeking the reallocation of a reservation for maintaining minimum flow, level, or quality of water (instream flow reservation).

FWP contends ARM 36.16.119(3) "places considerable burdens upon the holder of the instream flow reservation" in defending against a proposed reallocation of that reservation. FWP proposes language be added at the end of ARM 36.16.119(3) to the effect that the holder of an instream flow reservation be reimbursed by the petitioner for all expenditures made in relation to a reallocation petition.

RESPONSE 1:

As recognized by FWP, no substantive changes in the requirements or burdens of either petitioners or existing instream flow reservants were made in the instant

amendment/repeal of the reservation rules regarding reallocation. As such, the comment does not address any proposed changes to the rule.

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

/s/ Brian Bramblett  
BRIAN BRAMBLETT  
Rule Reviewer

Certified to the Secretary of State on October 19, 2015.