

This is an unofficial copy of the latest version of ARM 36.12.101, 36.12.201, 36.12.203, 36.12.204, 36.12.206, 36.12.207, 36.12.209, 36.12.210, 36.12.212 through 36.12.216, 36.12.220, 36.12.223, 36.12.225 through 36.12.228, 36.12.234; the adoption of New Rule I; and the repeal of ARM 36.12.202, 36.12.205, 36.12.211, 36.12.219, and 36.12.229 regarding definitions and the procedural rules for hearings, as adopted in MAR Notice 36-22-170 on December 1, 2014. This rule became effective on December 2, 2014, and this copy will remain on the [DNRC website](#) until the official [Secretary of State's administrative rules website](#) is updated.

DISCLAIMER: *If there is any discrepancy between the administrative rules contained within this document and the official Administrative Rules of Montana as maintained by the Secretary of State's Office, the official, legal version is that which is maintained by the Secretary of State's Office.*

ARM Title 36, Chapter 12, Subchapter 1

WATER RIGHTS BUREAU

Montana Water Use Act

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) "Act" means the Montana Water Use Act, Title 85, chapter 2, parts, 1 through 4, MCA.

(2) "Amount" refers to both a flow rate in gallons per minute (gpm), or cubic feet per second (cfs), and a volume of water in acre-feet (af).

(3) "Animal unit month (AUM)" means a measurement of livestock numbers:

(a) one beef cow = 1 AUM

(b) one dairy cow = 1.5 AUM

(c) one horse = 1.5 AUM

(d) three pigs = 1 AUM

(e) five sheep = 1 AUM

(f) 300 chickens = 1 AUM

(4) "Applicant" means the "person", as defined in 85-2-102, MCA, who files a permit or change application with the department.

(5) "Application" for purposes of ARM 36.12.120 through 36.12.122, 36.12.1301, 36.12.1401, 36.12.1501, and 36.12.1601 means an application for beneficial water use permit, Form No. 600, or an application to change a water right, Form No. 606.

(a) For the purposes of ARM 36.12.117 "application" means an application filed under 85-2-302, 85-2-316, 85-2-402, 85-2-407, and 85-2-408, MCA.

(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) "Associated right" means multiple water rights filed by the same or different appropriators that share the same point of diversion, place of use, or place of storage.

(8) "Basin closure area" means a hydrologic drainage basin area within which applications for certain water use permits cannot be accepted. Basin closure areas can be designated by statute, administrative rule, or in compacts.

(9) "Certificate of survey number" means the official number given a parcel of land created by a registered land survey as filed with the county clerk and recorder.

(10) "Cfs" means a flow rate of water in cubic feet per second and is equivalent to 448.8 gallons per minute. Applications for a flow rate of less than one cfs will be converted to gallons per minute.

This is an unofficial copy of the latest version of ARM 36.12.101, 36.12.201, 36.12.203, 36.12.204, 36.12.206, 36.12.207, 36.12.209, 36.12.210, 36.12.212 through 36.12.216, 36.12.220, 36.12.223, 36.12.225 through 36.12.228, 36.12.234; the adoption of New Rule I; and the repeal of ARM 36.12.202, 36.12.205, 36.12.211, 36.12.219, and 36.12.229 regarding definitions and the procedural rules for hearings, as adopted in MAR Notice 36-22-170 on December 1, 2014. This rule became effective on December 2, 2014, and this copy will remain on the [DNRC website](#) until the official [Secretary of State's administrative rules website](#) is updated.

DISCLAIMER: *If there is any discrepancy between the administrative rules contained within this document and the official Administrative Rules of Montana as maintained by the Secretary of State's Office, the official, legal version is that which is maintained by the Secretary of State's Office.*

(11) "Change authorization" or "change" means an approval by the department to make a change in appropriation right as defined by 85-2-102, MCA, and allowed by 85-2-402, MCA.

(12) "Claim" means a statement of claim filed pursuant to 85-2-221, MCA, for a water right established prior to July 1, 1973.

(13) "Combined appropriation" means an appropriation of water from the same source aquifer by two or more groundwater developments, that are physically manifold into the same system.

(14) "Cone of depression" means a cone-shaped depression of water table or pressure surface developing around a pumping well.

(15) "Consumptive use" means the annual volume of water used for a beneficial purpose, such as water transpired by growing vegetation, evaporated from soils or water surfaces, or incorporated into products that does not return to ground or surface water.

(16) "Contested case" means a proceeding before the department in which a determination of legal rights, duties, or privileges of a party is required to be made after an opportunity for hearing pursuant to Title 2, chapter 4, part 6, MCA. A contested case includes, but is not limited to: a proceeding and hearing on an objection to application pursuant to 85-2-309, MCA; a show cause proceeding and hearing involving revocation or modification of a permit or change in appropriation right pursuant to 85-2-314, MCA; and a show cause proceeding conducted following a preliminary determination to deny or preliminary determination to grant with modifications pursuant to 85-2-310, MCA.

(17) "Controlled groundwater area" means an area that has additional management controls applied to new groundwater uses pursuant to 85-2-506 through 85-2-508, MCA.

(18) "Criteria addendum" means that additional portion of an application on which substantial credible information must address the criteria listed in 85-2-311 and 85-2-402, MCA.

(19) "Dam" means an artificial barrier created by man-made means designed to form a basin to hold water and create a pond or reservoir.

(20) "Deep percolation" means water that percolates below the root zone and infiltrates a deeper aquifer that is not used by other appropriators or connected to a surface water source.

(21) "Department" means the Montana Department of Natural Resources and Conservation (DNRC).

(22) "Director" means the director of the department or the director's designee.

This is an unofficial copy of the latest version of ARM 36.12.101, 36.12.201, 36.12.203, 36.12.204, 36.12.206, 36.12.207, 36.12.209, 36.12.210, 36.12.212 through 36.12.216, 36.12.220, 36.12.223, 36.12.225 through 36.12.228, 36.12.234; the adoption of New Rule I; and the repeal of ARM 36.12.202, 36.12.205, 36.12.211, 36.12.219, and 36.12.229 regarding definitions and the procedural rules for hearings, as adopted in MAR Notice 36-22-170 on December 1, 2014. This rule became effective on December 2, 2014, and this copy will remain on the [DNRC website](#) until the official [Secretary of State's administrative rules website](#) is updated.

DISCLAIMER: *If there is any discrepancy between the administrative rules contained within this document and the official Administrative Rules of Montana as maintained by the Secretary of State's Office, the official, legal version is that which is maintained by the Secretary of State's Office.*

- (23) "Domestic use" means those water uses common to a household including:
- (a) food preparation;
 - (b) washing;
 - (c) drinking;
 - (d) bathing;
 - (e) waste disposal;
 - (f) cooling and heating; and
 - (g) garden and landscaping irrigation up to five acres.
- (24) "Drainage device" means a mechanism capable of draining or releasing substantially the full capacity of a reservoir.
- (25) "Element" means the factors which describe a water right including, but not limited to:
- (a) the priority date;
 - (b) source of supply;
 - (c) point of diversion;
 - (d) means of diversion;
 - (e) period of diversion;
 - (f) flow rate;
 - (g) volume;
 - (h) acreage;
 - (i) purpose;
 - (j) place of use;
 - (k) period of use;
 - (l) storage capacity; and
 - (m) storage location.
- (26) "Existing right", in addition to its definition in 85-2-102, MCA, includes any appropriation of water commenced prior to July 1, 1973, if completed according to the law as it existed when the appropriation was begun.
- (27) "Evapotranspiration" means the loss of water from the soil both by evaporation and by transpiration from living plants.
- (28) "Flow rate" is a measurement of the rate at which water flows or is diverted, impounded, or withdrawn from the source of supply for beneficial use, and commonly measured in cubic feet per second (cfs) or gallons per minute (gpm).
- (29) "General abstract" means a department-generated document that reflects certain water right elements from the department's database.
- (30) "Gpm" means a flow rate of water in gallons per minute.
- (31) "Hearing examiner" means the person or persons assigned by the director to hear the contested case.
- (32) "Household" means the dwelling, house, or other domestic facilities where an individual, family, or social unit lives.

This is an unofficial copy of the latest version of ARM 36.12.101, 36.12.201, 36.12.203, 36.12.204, 36.12.206, 36.12.207, 36.12.209, 36.12.210, 36.12.212 through 36.12.216, 36.12.220, 36.12.223, 36.12.225 through 36.12.228, 36.12.234; the adoption of New Rule I; and the repeal of ARM 36.12.202, 36.12.205, 36.12.211, 36.12.219, and 36.12.229 regarding definitions and the procedural rules for hearings, as adopted in MAR Notice 36-22-170 on December 1, 2014. This rule became effective on December 2, 2014, and this copy will remain on the [DNRC website](#) until the official [Secretary of State's administrative rules website](#) is updated.

DISCLAIMER: *If there is any discrepancy between the administrative rules contained within this document and the official Administrative Rules of Montana as maintained by the Secretary of State's Office, the official, legal version is that which is maintained by the Secretary of State's Office.*

(33) "Hydraulically connected" means a saturated water-bearing zone or aquifer in contact with surface water or other water-bearing zone where rate of exchange of water between the two sources depends on the water level of the water-bearing zone or aquifer.

(34) "Hydrologic system" means the overall movement of water, including snow and ice, above, on, or below the earth's surface.

(35) "Irrigation use" means the controlled application of water to land to supply water requirements not satisfied by rainfall.

(36) "Means of diversion" means the type of structures, facilities, or methods used to appropriate, impound, or collect water. Examples include, but are not limited to the following:

- (a) dike;
- (b) dam;
- (c) ditch;
- (d) headgate;
- (e) infiltration gallery;
- (f) pipeline;
- (g) pump;
- (h) pit; or
- (i) well.

(37) "Median year" means that water flow would be at the 50th percentile. Half of the years would have had higher flows and the other half would have had lower flows.

(38) "Multiple domestic use" means a domestic use by more than one household or dwelling characterized by long-term occupancy as opposed to guests. Examples are domestic uses by:

- (a) colonies;
- (b) condominiums;
- (c) townhouses; and
- (d) subdivisions.

(39) "Municipal use" means water appropriated by and provided for those in and around a municipality or an unincorporated town.

(40) "Net depletion" for the purposes of 85-2-360, MCA, means the calculated volume, rate, timing, and location of reductions to surface water resulting from a proposed groundwater appropriation that is not offset by the corresponding accretions to surface water by water that is not consumed and subsequently returns to the surface water.

(41) "Notice area" means a geographic area determined by the department which may include water rights affected by an application.

(42) "Off-stream reservoir" means a reservoir that is not located on the source of supply and is supplied with water from a diversion means such as a pipe, headgate and ditch, or other means.

This is an unofficial copy of the latest version of ARM 36.12.101, 36.12.201, 36.12.203, 36.12.204, 36.12.206, 36.12.207, 36.12.209, 36.12.210, 36.12.212 through 36.12.216, 36.12.220, 36.12.223, 36.12.225 through 36.12.228, 36.12.234; the adoption of New Rule I; and the repeal of ARM 36.12.202, 36.12.205, 36.12.211, 36.12.219, and 36.12.229 regarding definitions and the procedural rules for hearings, as adopted in MAR Notice 36-22-170 on December 1, 2014. This rule became effective on December 2, 2014, and this copy will remain on the [DNRC website](#) until the official [Secretary of State's administrative rules website](#) is updated.

DISCLAIMER: *If there is any discrepancy between the administrative rules contained within this document and the official Administrative Rules of Montana as maintained by the Secretary of State's Office, the official, legal version is that which is maintained by the Secretary of State's Office.*

(43) "On-stream reservoir" means a reservoir that is located on the source of supply.

(44) "Owner of record" means a person who, according to the department's records, is the current owner of a water right.

(45) "Ownership update" means the updating of the department's water right ownership records by the filing of an ownership update form, Form No. 608, pursuant to 85-2-421 through 85-2-426, MCA. The department's form does not transfer water rights or legally determine water right ownership. It only updates the department's centralized ownership records as reflected by the legal documents that actually transfer water rights.

(46) "Party" means an applicant, objector, petitioner, respondent, or other person named, admitted, or entitled to a contested case hearing pursuant to Title 85, chapter 2, parts 3 and 4, MCA.

(47) "Period of diversion" means the period in a calendar year when water is diverted, impounded, or withdrawn from the source of supply. It is described by the earliest month and day and the latest month and day water is diverted during each year.

(48) "Period of use" means the period in a calendar year when water is used for specified beneficial use. It is described as the earliest month and day and the latest month and day the water is beneficially used during each year.

(49) "Permit" means a permit to appropriate water issued by the department under Title 85, chapter 2, part 3, MCA.

(50) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency thereof, or any other entity (see 85-2-102, MCA).

(51) "Place of use (POU)" means the land, facility, or site where water is beneficially used.

(52) "Point of diversion (POD)" means the location or locations where water is diverted from the source of supply.

(53) "Pit, pit-dam, or pond" means a body of water that is created by man-made means, which stores water for beneficial use.

(54) "Place of storage" means a reservoir, pit, pit-dam, or pond.

(55) "Potentially affected area" for the purposes of 85-2-361, MCA, means, as referred to in basin closure rules and in the context of a hydrogeologic assessment, the area or estimated area where groundwater will be affected by a proposed project. The identified area is not required to exceed the boundaries of the drainage subdivisions established by the Office of Water Data Coordination, United States Geological Survey, and used by the Water Court, unless the applicant chooses to expand the boundaries.

(56) "Possessory interest" means the right to exert some interest or form of control over specific land. It is the legal right to possess or use property by virtue of an interest created in the property, though it need not be accompanied by fee title, such as the right of a tenant, easement holder, or lessee.

This is an unofficial copy of the latest version of ARM 36.12.101, 36.12.201, 36.12.203, 36.12.204, 36.12.206, 36.12.207, 36.12.209, 36.12.210, 36.12.212 through 36.12.216, 36.12.220, 36.12.223, 36.12.225 through 36.12.228, 36.12.234; the adoption of New Rule I; and the repeal of ARM 36.12.202, 36.12.205, 36.12.211, 36.12.219, and 36.12.229 regarding definitions and the procedural rules for hearings, as adopted in MAR Notice 36-22-170 on December 1, 2014. This rule became effective on December 2, 2014, and this copy will remain on the [DNRC website](#) until the official [Secretary of State's administrative rules website](#) is updated.

DISCLAIMER: *If there is any discrepancy between the administrative rules contained within this document and the official Administrative Rules of Montana as maintained by the Secretary of State's Office, the official, legal version is that which is maintained by the Secretary of State's Office.*

(57) "Pre-application review" means the applicant or the applicant's attorney or consultant or others who may know about the proposed project have met with the department in person, via teleconference, or via video conference to discuss details of the proposed project and application.

(58) "Primary diversion" means the initial point from which a diversion means will remove or impound water from the source of supply.

(59) "Priority date" means the clock time, day, month, and year assigned to a water right application or notice upon department acceptance of the application or notice. The priority date determines the ranking among water rights.

(60) "Proceeding" means all events in a contested case following issuance of a hearing notice and appointment of hearing examiner, including prehearing conferences, hearings, interlocutory orders, and the decision of the hearing examiner on the merits.

(61) "Project" means a place of use that has its own identifiable flow rate, volume, and means of diversion.

(62) "Recreational use" includes but is not limited to swimming, boating, water sports, and fishing.

(63) "Reservoir" means a pond, pit, or pit-dam, created by man-made means that impounds and stores water.

(64) "Return flow" means that part of a diverted flow which is applied to irrigated land and is not consumed and returns underground to its original source or another source of water, and to which other water users are entitled to a continuation of, as part of their water right. Return flow is not wastewater. Rather, it is irrigation water seeping back to a stream after it has gone underground to perform its nutritional function. Return flow results from use and not from water carried on the surface in ditches and returned to the stream.

(65) "Secondary diversion" means a diversion that is not from the source of supply but is a diversion that is used after the water is diverted from the source of supply at the primary diversion. For example, a pump in a ditch or reservoir is a secondary diversion.

(66) "Seepage water" means that part of a diverted flow which is not consumptively used and which slowly seeps underground and eventually returns to a surface or groundwater source, and which other water users can appropriate, but have no legal right to its continuance. Typical examples of seepage water include underground losses from an irrigation ditch or pond.

(67) "Senior water right" means a water right with a priority date that is earlier in time than another water right.

This is an unofficial copy of the latest version of ARM 36.12.101, 36.12.201, 36.12.203, 36.12.204, 36.12.206, 36.12.207, 36.12.209, 36.12.210, 36.12.212 through 36.12.216, 36.12.220, 36.12.223, 36.12.225 through 36.12.228, 36.12.234; the adoption of New Rule I; and the repeal of ARM 36.12.202, 36.12.205, 36.12.211, 36.12.219, and 36.12.229 regarding definitions and the procedural rules for hearings, as adopted in MAR Notice 36-22-170 on December 1, 2014. This rule became effective on December 2, 2014, and this copy will remain on the [DNRC website](#) until the official [Secretary of State's administrative rules website](#) is updated.

DISCLAIMER: *If there is any discrepancy between the administrative rules contained within this document and the official Administrative Rules of Montana as maintained by the Secretary of State's Office, the official, legal version is that which is maintained by the Secretary of State's Office.*

(68) "Service" or "serve" means personal service or service by first class United States mail, postage prepaid and addressed to a person's last known address. Proof of service shall be made by the person making such service. Service by mail is complete upon the placing of the item to be served in the mail. Agencies of the state of Montana may also serve by depositing the item to be served with the mail and distribution section, General Services Division, Department of Administration.

(69) "Show cause" means a contested case before the department in which a person aggrieved by a proposed action of the department is given the opportunity to present evidence and testimony to show why the proposed action should not be taken. A show cause proceeding conducted following a preliminary determination to deny or preliminary determination to grant with modifications pursuant to 85-2-310, MCA, shall be conducted as an informal contested case proceeding pursuant to 2-4-604, MCA.

(70) "Source aquifer" means the specific groundwater source from which water is diverted for a beneficial use.

(71) "Source of supply" means the specific surface or groundwater source from which water is diverted for a beneficial use.

(72) "Spring" means a hydrologic occurrence of water involving the natural flow of water originating from beneath the land surface and arising to the surface of the ground. A developed spring is groundwater if some physical alteration of its natural state occurs at its point of discharge from the ground, such as simple excavation, cement encasement, or rock cribbing. An undeveloped spring is surface water if no development occurs at its point of discharge and the appropriation is made from the waters flowing on the surface of the ground.

(73) "Staff" means a person employed or retained by the department.

(74) "Stock use" means the use of water for livestock, including but not limited to cattle, horses, pigs, sheep, llamas, and animals owned and controlled on game farms. It does not include domestic animals such as dogs and cats or wild animals.

(75) "Surface water" means all water of the state at the surface of the ground, including but not limited to any river, stream, creek, ravine, coulee, undeveloped spring, lake, and other natural surface source of water regardless of its character or manner of occurrence.

(76) "Temporary authorization or temporary change" means an authorization to change granted pursuant to 85-2-407 and 85-2-408, MCA, for a specific period of time and with an automatic expiration date.

(77) "Temporary emergency appropriation" means the temporary beneficial use of water necessary to protect lives or property by reason of fire, storm, earthquake or other disaster, or unforeseen combination of circumstances which call for immediate action. An appropriation made necessary due to drought conditions is not a temporary emergency appropriation.

This is an unofficial copy of the latest version of ARM 36.12.101, 36.12.201, 36.12.203, 36.12.204, 36.12.206, 36.12.207, 36.12.209, 36.12.210, 36.12.212 through 36.12.216, 36.12.220, 36.12.223, 36.12.225 through 36.12.228, 36.12.234; the adoption of New Rule I; and the repeal of ARM 36.12.202, 36.12.205, 36.12.211, 36.12.219, and 36.12.229 regarding definitions and the procedural rules for hearings, as adopted in MAR Notice 36-22-170 on December 1, 2014. This rule became effective on December 2, 2014, and this copy will remain on the [DNRC website](#) until the official [Secretary of State's administrative rules website](#) is updated.

DISCLAIMER: *If there is any discrepancy between the administrative rules contained within this document and the official Administrative Rules of Montana as maintained by the Secretary of State's Office, the official, legal version is that which is maintained by the Secretary of State's Office.*

(78) "Temporary permit" means a permit to appropriate water granted pursuant to Title 85, chapter 2, part 3, MCA, for a specific period of time and with an automatic expiration date.

(79) "Transitory diversion" means a movable diversion that will divert water from several nonspecific points along a source of supply.

(80) "Tributary" means the following:

- (a) a surface water source feeding another surface water source; or
- (b) groundwater hydraulically connected to a surface water source.

(81) "Unnamed tributary" means a surface water stream, coulee, or draw, which is not named on a United States Geological Survey (USGS) or Water Resources Survey (WRS) map.

(82) "Use of water for the benefit of the appropriator" means:

- (a) the amount of water reasonably needed for the intended purpose;
- (b) the amount of water needed for conveyance to the intended purpose; and
- (c) water used for instream flow.

(83) "Volume" means the acre-feet of water. Twelve acre-inches or 325,851 gallons are equal to one acre-foot.

(84) "Wastewater" means that part of a diverted flow which is not consumptively used and which returns as surface water to any surface water source, and which other water users can appropriate, but have no legal right to its continuance. A typical example is an irrigator who turns into the individual furrows traversing the irrigator's field from the head ditch more water than can seep into the ground. The water that stays on the surface and is not absorbed into the earth and which remains at the end of the furrow and is collected in a wastewater ditch is wastewater.

(85) "Water flow estimating technique" means a mathematical method of estimating flow generally accepted by the department. This may be accomplished by correlating measurements of diversion system components with actual water use to estimate flow rate or volume of water used. An example is the use of measurements of power consumed by a pump to estimate the amount of water delivered by a pump. Another flow estimating technique would be to apply specific formulas developed by professional hydrologists based on climatic, basin, or stream channel characteristics to estimate stream flow.

(86) "Water measuring device" means equipment that directly measures water flow in open or closed channels and conduits. Examples would be flow meters, weirs, flumes, and bucket and stop watch.

(87) "Water Resources Survey (WRS)" means a survey by county of water resources and water rights in Montana by the former State Engineer's Office or Water Resources Board, predecessors of the department.

This is an unofficial copy of the latest version of ARM 36.12.101, 36.12.201, 36.12.203, 36.12.204, 36.12.206, 36.12.207, 36.12.209, 36.12.210, 36.12.212 through 36.12.216, 36.12.220, 36.12.223, 36.12.225 through 36.12.228, 36.12.234; the adoption of New Rule I; and the repeal of ARM 36.12.202, 36.12.205, 36.12.211, 36.12.219, and 36.12.229 regarding definitions and the procedural rules for hearings, as adopted in MAR Notice 36-22-170 on December 1, 2014. This rule became effective on December 2, 2014, and this copy will remain on the [DNRC website](#) until the official [Secretary of State's administrative rules website](#) is updated.

DISCLAIMER: *If there is any discrepancy between the administrative rules contained within this document and the official Administrative Rules of Montana as maintained by the Secretary of State's Office, the official, legal version is that which is maintained by the Secretary of State's Office.*

(88) "Water saving method" means a change to the actual water use system or management of water use in which the modification being made would decrease the amount of water needed to accomplish the same result. Water saving methods might include:

- (a) changing from a ditch conveyance to a pipeline;
- (b) lining an earthen ditch with concrete or plastic; and
- (c) changing management of a water system to decrease water consumption.

(89) "Zone of influence" means the horizontal extent of the cone of depression. (History: 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 through 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, 85-2-520, MCA; NEW, Eff. 7/5/73; AMD, Eff. 2/4/75; AMD, 1987 MAR p. 1560, Eff. 9/11/87; AMD, 1992 MAR p. 1615, Eff. 7/31/92; AMD, 1993 MAR p. 1335A, Eff. 6/25/93; AMD, 2004 MAR p. 3036, Eff. 1/1/05; AMD, 2006 MAR p. 1387, Eff. 6/2/06; AMD, 2007 MAR p. 508, Eff. 3/26/07; AMD, 2007 MAR p. 1098, Eff. 8/10/07; AMD, 2008 MAR p. 140, Eff. 2/1/08; AMD, 2008 MAR p. 567, Eff. 3/28/08; AMD, 2011 MAR p. 2043, Eff. 10/1/11; AMD, 2012 MAR p. 2071, Eff. 10/12/12; AMD, 2014 MAR p. 2956, Eff. 12/12/14.)

This is an unofficial copy of the latest version of ARM 36.12.101, 36.12.201, 36.12.203, 36.12.204, 36.12.206, 36.12.207, 36.12.209, 36.12.210, 36.12.212 through 36.12.216, 36.12.220, 36.12.223, 36.12.225 through 36.12.228, 36.12.234; the adoption of New Rule I; and the repeal of ARM 36.12.202, 36.12.205, 36.12.211, 36.12.219, and 36.12.229 regarding definitions and the procedural rules for hearings, as adopted in MAR Notice 36-22-170 on December 1, 2014. This rule became effective on December 2, 2014, and this copy will remain on the [DNRC website](#) until the official [Secretary of State's administrative rules website](#) is updated.

DISCLAIMER: *If there is any discrepancy between the administrative rules contained within this document and the official Administrative Rules of Montana as maintained by the Secretary of State's Office, the official, legal version is that which is maintained by the Secretary of State's Office.*

ARM Title 36, Chapter 12, Subchapter 2

WATER RIGHTS BUREAU

Procedural Rules for Water Rights Contested Case Hearings

36.12.201 SCOPE AND PURPOSE (1) The procedures contained within this subchapter govern contested case proceedings conducted by the department pursuant to Title 85, chapter 2, parts 1 through 4, MCA.

(2) The attorney general's model rules for conducting contested case proceedings, adopted by the department at ARM 36.2.101, shall not apply to proceedings conducted by the department pursuant to Title 85, chapter 2, MCA, and are superseded for that purpose only. (History: 2-4-201, 85-2-113, MCA; IMP, 2-4-201, 85-2-113, 85-2-121, MCA; NEW, 1984 MAR p. 697, Eff. 4/27/84; AMD, 2014 MAR p. 2956, Eff. 12/12/14.)

36.12.202 DEFINITIONS (REPEALED) (History: 2-4-201, 85-2-113, MCA; IMP, 2-4-201, 85-2-113, MCA; NEW, 1984 MAR p. 697, Eff. 4/27/84; AMD, 1994 MAR p. 307, Eff. 2/11/94; AMD, 2000 MAR p. 636, Eff. 2/25/00; REP, 2014 MAR p. 2956, Eff. 12/12/14.)

36.12.203 HEARING EXAMINERS (1) A hearing examiner shall be assigned to preside over a contested case proceeding before the department. An individual that was involved in the preliminary determination on the application shall not be assigned as hearing examiner. The department shall provide the hearing examiner with a complete copy of the department's file including all applications, correspondence, documents, notices, objections, petitions, and preliminary determinations.

(2) Consistent with law, the hearing examiner shall perform the following duties:

- (a) regulate the course of the proceeding, including the scheduling, establishing deadlines, recessing, reconvening, and adjournment;
- (b) hear and rule on motions;
- (c) preside over the hearing;
- (d) administer oaths and affirmations;
- (e) maintain a complete record of the proceeding; and
- (f) issue a decision or final order containing findings of fact and conclusions of law.

This is an unofficial copy of the latest version of ARM 36.12.101, 36.12.201, 36.12.203, 36.12.204, 36.12.206, 36.12.207, 36.12.209, 36.12.210, 36.12.212 through 36.12.216, 36.12.220, 36.12.223, 36.12.225 through 36.12.228, 36.12.234; the adoption of New Rule I; and the repeal of ARM 36.12.202, 36.12.205, 36.12.211, 36.12.219, and 36.12.229 regarding definitions and the procedural rules for hearings, as adopted in MAR Notice 36-22-170 on December 1, 2014. This rule became effective on December 2, 2014, and this copy will remain on the [DNRC website](#) until the official [Secretary of State's administrative rules website](#) is updated.

DISCLAIMER: *If there is any discrepancy between the administrative rules contained within this document and the official Administrative Rules of Montana as maintained by the Secretary of State's Office, the official, legal version is that which is maintained by the Secretary of State's Office.*

(3) Consistent with law and at the hearing examiner's discretion, the hearing examiner is authorized to perform the following duties:

- (a) enter preliminary, interlocutory, and other orders deemed necessary;
- (b) limit the scope of discovery;
- (c) appoint a staff expert to issue a written report;
- (d) question witnesses;
- (e) issue subpoenas;
- (f) enter rulings regarding the admissibility of evidence;
- (g) request the submission of proposed findings of fact and conclusions of law;
- (h) perform such other duties consistent with the authority provided for by law;

and

- (i) perform such other duties as may be delegated by the director.

(4) The authority of the hearing examiner terminates upon the entry of a decision or final order on the merits. (History: 2-4-201, 85-2-113, MCA; IMP, 2-4-611, 2-4-612, 2-4-614, 2-4-623, 85-2-121, MCA; NEW, 1984 MAR p. 697, Eff. 4/27/84; AMD, 1994 MAR p. 307, Eff. 2/11/94; AMD, 2014 MAR p. 598, Eff. 3/28/14; AMD, 2014 MAR p. 2956, Eff. 12/12/14.)

36.12.204 HEARING NOTICE AND APPOINTMENT OF HEARING EXAMINER

(1) The department shall serve all parties with a hearing notice and appointment of hearing examiner:

(a) within 30 days of issuing a preliminary determination to deny an application pursuant to 85-2-310, MCA; or

(b) within 30 days of the applicant filing a written request for a hearing on a preliminary determination to grant application in modified form pursuant to 85-2-310, MCA; or

(c) within 30 days after determining the validity of objections to application pursuant to 85-2-308 and 85-2-309, MCA.

(2) A hearing notice and appointment of hearing examiner in all contested cases shall include:

(a) a short and plain statement regarding each of the requirements set forth in 2-4-601, MCA;

(b) name, address, and telephone number of the hearing examiner;

(c) notification of the right of the parties to be represented by legal counsel;

(d) notification that the failure of a party to appear at the hearing may result in default against a party; and

(e) a citation to these procedural rules and to the contested case provisions of Title 2, chapter 4, part 6, MCA.

This is an unofficial copy of the latest version of ARM 36.12.101, 36.12.201, 36.12.203, 36.12.204, 36.12.206, 36.12.207, 36.12.209, 36.12.210, 36.12.212 through 36.12.216, 36.12.220, 36.12.223, 36.12.225 through 36.12.228, 36.12.234; the adoption of New Rule I; and the repeal of ARM 36.12.202, 36.12.205, 36.12.211, 36.12.219, and 36.12.229 regarding definitions and the procedural rules for hearings, as adopted in MAR Notice 36-22-170 on December 1, 2014. This rule became effective on December 2, 2014, and this copy will remain on the [DNRC website](#) until the official [Secretary of State's administrative rules website](#) is updated.

DISCLAIMER: *If there is any discrepancy between the administrative rules contained within this document and the official Administrative Rules of Montana as maintained by the Secretary of State's Office, the official, legal version is that which is maintained by the Secretary of State's Office.*

(3) A hearing notice and appointment of hearing examiner involving an objection to application pursuant to 85-2-308 and 85-2-309, MCA, shall include:

- (a) a copy of all valid objections; and
- (b) the name, address, and telephone number of each objector or the objector's attorney if represented.

(4) A hearing notice and appointment of hearing examiner in a show cause proceeding conducted following a preliminary determination to deny an application or to grant application in modified form pursuant to 85-2-310, MCA, shall include a statement that the proceeding is subject to the informal contested case proceedings provisions of 2-4-604, MCA.

(5) A hearing notice and appointment of hearing examiner shall be served not less than 30 days prior to the hearing unless the parties agree in writing to a shorter notice time period.

(6) Except as required under the circumstances of ARM 36.12.232, no hearing shall be scheduled on a Saturday, Sunday, or legal holiday.

(7) Service of a hearing notice and appointment of hearing examiner constitutes the commencement of a contested case proceeding before the department.

(8) When a party is represented by an attorney, service upon the attorney shall constitute service upon the party. (History: 2-4-201, 85-2-113, MCA; IMP, 2-4-105, 2-4-601, 85-2-308, 85-2-310, MCA; NEW, 1984 MAR p. 697, Eff. 4/27/84; AMD, 1994 MAR p. 307, Eff. 2/11/94; AMD, 2014 MAR p. 598, Eff. 3/28/14; AMD, 2014 MAR p. 2956, Eff. 12/12/14.)

36.12.205 DEFECTIVE NOTICE OF APPLICATION (REPEALED) (History: 2-4-201, 85-2-113, MCA; IMP, 2-4-105, MCA; NEW, 1984 MAR p. 697, Eff. 4/27/84; AMD, 1994 MAR p. 307, Eff. 2/11/94; REP, 2014 MAR p. 2956, Eff. 12/12/14.)

36.12.206 REPRESENTATION (1) A party may appear on their own behalf or may be represented by an attorney in a contested case proceeding. All legal entities, including but not limited to corporations, limited liability companies, trusts, partnerships, and not for profit associations must be represented by an attorney licensed to practice law in the state of Montana throughout all contested case proceedings. This rule shall not be construed to sanction the unauthorized practice of law.

(2) The department may appear in a contested case for the limited purpose of representing the interests of the public. (History: 2-4-201, 85-2-113, MCA; IMP, 2-4-105, MCA; NEW, 1984 MAR p. 697, Eff. 4/27/84; AMD, 1994 MAR p. 307, Eff. 2/11/94; AMD, 2014 MAR p. 2956, Eff. 12/12/14.)

This is an unofficial copy of the latest version of ARM 36.12.101, 36.12.201, 36.12.203, 36.12.204, 36.12.206, 36.12.207, 36.12.209, 36.12.210, 36.12.212 through 36.12.216, 36.12.220, 36.12.223, 36.12.225 through 36.12.228, 36.12.234; the adoption of New Rule I; and the repeal of ARM 36.12.202, 36.12.205, 36.12.211, 36.12.219, and 36.12.229 regarding definitions and the procedural rules for hearings, as adopted in MAR Notice 36-22-170 on December 1, 2014. This rule became effective on December 2, 2014, and this copy will remain on the [DNRC website](#) until the official [Secretary of State's administrative rules website](#) is updated.

DISCLAIMER: *If there is any discrepancy between the administrative rules contained within this document and the official Administrative Rules of Montana as maintained by the Secretary of State's Office, the official, legal version is that which is maintained by the Secretary of State's Office.*

36.12.207 SETTLEMENT, STIPULATION OR CONSENT (1) The terms of a settlement, stipulation, or consent entered between parties as a private contractual agreement are not binding on the department.

(2) If the parties propose inclusion of the terms of a settlement, stipulation, or consent as a condition(s) to a permit or change authorization, the parties shall submit a copy of the written settlement, stipulation, or consent along with any proposed condition(s) to the department for consideration. At the department's discretion, the terms of a settlement, stipulation, or consent may be included as a condition(s) to a permit or change authorization upon determination that the terms of the settlement, stipulation, or consent are consistent with and necessary to satisfy the applicable statutory criteria.

(3) A complete copy of any settlement, stipulation, or consent considered by the department must be included in the record. (History: 2-4-201, 85-2-113, MCA; IMP, 85-2-310, 85-2-311, 85-2-402, MCA; NEW, 1984 MAR p. 697, Eff. 4/27/84; AMD, 1994 MAR p. 307, Eff. 2/11/94; AMD, 2014 MAR p. 2956, Eff. 12/12/14.)

36.12.208 DEFAULT (1) A default occurs when a party fails to appear at a hearing or fails to comply with any interlocutory orders of the hearing examiner. Upon default, the defaulting party's claim or interest in the proceeding may be dismissed (with or without prejudice), denied, disregarded or disposed of adverse to the defaulting party. An applicant is not relieved of the duty to present evidence to satisfy the applicant's substantive burden of proof when all objectors to a proceeding default. (History: 2-4-201, 85-2-113, MCA; IMP, 2-4-603, 85-2-311, MCA; NEW, 1984 MAR p. 697, Eff. 4/27/84; AMD, 1994 MAR p. 307, Eff. 2/11/94.)

36.12.209 TIME (1) The time within which an act is to be done as provided in these rules shall be computed by excluding the first day and including the last, except that if the last day be Saturday, Sunday, or a legal holiday, the act may be done on the next succeeding regular business day. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

(2) Whenever a party has the right or is required to do some act or take some action within a prescribed period after the service of a notice or other paper upon them, or whenever such service is required to be made within a prescribed period before a specified event, and the notice or paper is served by mail, postmarking of the notice or paper on or before the prescribed period shall satisfy this rule.

(3) If a pleading or other document is not filed in accordance with applicable time limits, upon motion of a party or the hearing examiner, the pleading may be stricken from the record. (History: 2-4-201, 85-2-113, MCA; IMP, 2-4-611, MCA; NEW, 1984 MAR p. 697, Eff. 4/27/84; AMD, 1994 MAR p. 307, Eff. 2/11/94; AMD, 2014 MAR p. 2956, Eff. 12/12/14.)

This is an unofficial copy of the latest version of ARM 36.12.101, 36.12.201, 36.12.203, 36.12.204, 36.12.206, 36.12.207, 36.12.209, 36.12.210, 36.12.212 through 36.12.216, 36.12.220, 36.12.223, 36.12.225 through 36.12.228, 36.12.234; the adoption of New Rule I; and the repeal of ARM 36.12.202, 36.12.205, 36.12.211, 36.12.219, and 36.12.229 regarding definitions and the procedural rules for hearings, as adopted in MAR Notice 36-22-170 on December 1, 2014. This rule became effective on December 2, 2014, and this copy will remain on the [DNRC website](#) until the official [Secretary of State's administrative rules website](#) is updated.

DISCLAIMER: *If there is any discrepancy between the administrative rules contained within this document and the official Administrative Rules of Montana as maintained by the Secretary of State's Office, the official, legal version is that which is maintained by the Secretary of State's Office.*

36.12.210 CONSOLIDATION (1) Two or more proceedings may be proposed for consolidation as a single proceeding upon motion of a party or upon notice by the hearing examiner:

(a) if consolidation is proposed by a party, the procedures regarding filing of motions to the hearing examiner provided for by ARM 36.12.213 shall be followed; or

(b) if consolidation is proposed by the hearing examiner, the hearing examiner shall serve each party with written notification of the proposal to consolidate. Any party opposing consolidation shall file and serve a written objection stating the reasons consolidation should not be ordered within 14 days of service of notice.

(2) The hearing examiner may order consolidation upon determining:

(a) the proceedings present substantially the same issues of fact or law;

(b) the final order in one proceeding would affect the rights of parties in the other(s); and

(c) the consolidation would not substantially prejudice any party.

(3) An order granting or denying a motion for consolidation shall be served upon all parties and shall contain a description of the cases being consolidated and shall explain the basis for the hearing examiner's determination.

(4) Multiple objections to a single application shall be consolidated without requirement of a motion, notice, or order. (History: 2-4-201, 85-2-113, MCA; IMP, 85-2-309, MCA; NEW, 1984 MAR p. 697, Eff. 4/27/84; AMD, 1994 MAR p. 307, Eff. 2/11/94; AMD, 2014 MAR p. 2956, Eff. 12/12/14.)

36.12.211 DISQUALIFICATION OF HEARING EXAMINER (REPEALED)
(History: 2-4-201, 85-2-113, MCA; IMP, 2-4-611, MCA; NEW, 1984 MAR p. 697, Eff. 4/27/84; REP, 2014 MAR p. 2956, Eff. 12/12/14.)

36.12.212 PREHEARING CONFERENCES AND ORDERS (1) Upon written request of a party or by order of the hearing examiner, a prehearing conference may be conducted to:

(a) clarify the issues to be determined prior to or at the hearing;

(b) establish deadlines for matters including but not limited to:

(i) submission of prehearing evidence;

(ii) submission of post-hearing pleadings; and

(iii) submission of proposed findings of fact and conclusions of law;

(c) obtain stipulations regarding foundation for evidence including but not limited to expert witness testimony;

(d) hear argument and rule on prehearing motions and evidentiary objections;

(e) identify witnesses and exhibits;

(f) establish and review hearing procedures; and

(g) address other issues related to the hearing.

This is an unofficial copy of the latest version of ARM 36.12.101, 36.12.201, 36.12.203, 36.12.204, 36.12.206, 36.12.207, 36.12.209, 36.12.210, 36.12.212 through 36.12.216, 36.12.220, 36.12.223, 36.12.225 through 36.12.228, 36.12.234; the adoption of New Rule I; and the repeal of ARM 36.12.202, 36.12.205, 36.12.211, 36.12.219, and 36.12.229 regarding definitions and the procedural rules for hearings, as adopted in MAR Notice 36-22-170 on December 1, 2014. This rule became effective on December 2, 2014, and this copy will remain on the [DNRC website](#) until the official [Secretary of State's administrative rules website](#) is updated.

DISCLAIMER: *If there is any discrepancy between the administrative rules contained within this document and the official Administrative Rules of Montana as maintained by the Secretary of State's Office, the official, legal version is that which is maintained by the Secretary of State's Office.*

(2) Following a prehearing conference the hearing examiner shall issue an order reciting the matters addressed and documenting any action taken at the prehearing conference. The order shall control the subsequent course of the proceeding and hearing unless modified by order.

(3) A party who fails to appear at a prehearing conference without good cause waives the right to object to any matters set forth in the prehearing order. (History: 2-4-201, 85-2-113, MCA; IMP, 2-4-611, 2-4-612, MCA; NEW, 1984 MAR p. 697, Eff. 4/27/84; AMD, 1994 MAR p. 307, Eff. 2/11/94; AMD, 2014 MAR p. 2956, Eff. 12/12/14.)

36.12.213 MOTIONS TO HEARING EXAMINER (1) Any party may seek relief by means of an appropriate written motion. Written motions shall clearly state the relief sought by a party and the grounds and authority supporting the entry of an order granting the motion. All motions which assert factual matters not of record as the grounds for relief must be accompanied by affidavits or verified exhibits which show the facts upon which the proposed relief is grounded. Each motion must be supported by a brief or memorandum of law showing the moving party's entitlement to relief as a matter of law.

(a) All written motions other than motions for summary judgment shall contain a statement that each party has been contacted and state whether the party contests the motion. Uncontested written motions shall be accompanied by a proposed order for the hearing examiner's consideration.

(b) Within ten days after service of a contested motion, each opposing party shall file a written response stating with particularity the factual and legal basis for opposition to the motion.

(c) Within ten days of being served with a response, the moving party may file a written reply in support of the written motion.

(d) A written motion, response, or reply may include a request for oral argument on the motion. At the hearing examiner's discretion the parties may be ordered to appear at a specific time and place for oral argument telephonically or in person before ruling on the motion.

(e) The original of all written motions, responses, and replies must be filed with the hearing examiner.

(f) A copy of all written motions, responses, and replies must be served on all parties.

(g) All written motions, responses, and replies must include a signed certificate of service setting forth the date and manner of service on all parties.

This is an unofficial copy of the latest version of ARM 36.12.101, 36.12.201, 36.12.203, 36.12.204, 36.12.206, 36.12.207, 36.12.209, 36.12.210, 36.12.212 through 36.12.216, 36.12.220, 36.12.223, 36.12.225 through 36.12.228, 36.12.234; the adoption of New Rule I; and the repeal of ARM 36.12.202, 36.12.205, 36.12.211, 36.12.219, and 36.12.229 regarding definitions and the procedural rules for hearings, as adopted in MAR Notice 36-22-170 on December 1, 2014. This rule became effective on December 2, 2014, and this copy will remain on the [DNRC website](#) until the official [Secretary of State's administrative rules website](#) is updated.

DISCLAIMER: *If there is any discrepancy between the administrative rules contained within this document and the official Administrative Rules of Montana as maintained by the Secretary of State's Office, the official, legal version is that which is maintained by the Secretary of State's Office.*

(2) At the hearing examiner's discretion, oral motions may be considered during a contested case hearing.

(a) The hearing examiner may request that an oral motion and/or any response presented at the time of hearing be submitted in writing before ruling.

(b) The hearing examiner may enter an oral ruling granting, denying, or modifying the relief requested at the time of hearing.

(3) The hearing examiner shall enter an order on all written and oral motions granting, denying, or modifying the relief requested. All orders of the hearing examiner regarding written and oral motions shall state with particularity the basis for the order and shall be:

(a) issued in writing prior to the hearing; or

(b) incorporated in writing into the hearing examiner's decision or final order following hearing. (History: 2-4-201, 85-2-113, MCA; IMP, 2-4-611, MCA; NEW, 1984 MAR p. 697, Eff. 4/27/84; AMD, 1994 MAR p. 307, Eff. 2/11/94; AMD, 2014 MAR p. 2956, Eff. 12/12/14.)

36.12.214 MOTIONS TO DIRECTOR (1) Any party may request that a pending motion, or a motion decided adversely to that party by the hearing examiner before or during the course of the proceeding be certified by the hearing examiner to the director. In deciding what motions should be certified, the hearing examiner shall consider the following:

(a) whether the motion involves a controlling question of law, which if finally determined, would materially advance the ultimate determination of the proceeding; or

(b) whether certifying the motion is necessary to promote the development of the full record or resolution of the case on the merits.

(2) The director may not rule upon a motion unless the motion is certified to the director by the hearing examiner in the manner described in this rule. If a motion is certified to the director, the director may require the parties to file briefs before ruling upon the motion. Certified motions shall be decided in the manner provided for in ARM 36.12.229(2).

(3) No motions shall be made directly to the director subsequent to the assignment of a hearing examiner. (History: 2-4-201, 85-2-113, MCA; IMP, 2-4-611, MCA; NEW, 1984 MAR p. 697, Eff. 4/27/84; AMD, 1994 MAR p. 307, Eff. 2/11/94; AMD, 2014 MAR p. 2956, Eff. 12/12/14.)

This is an unofficial copy of the latest version of ARM 36.12.101, 36.12.201, 36.12.203, 36.12.204, 36.12.206, 36.12.207, 36.12.209, 36.12.210, 36.12.212 through 36.12.216, 36.12.220, 36.12.223, 36.12.225 through 36.12.228, 36.12.234; the adoption of New Rule I; and the repeal of ARM 36.12.202, 36.12.205, 36.12.211, 36.12.219, and 36.12.229 regarding definitions and the procedural rules for hearings, as adopted in MAR Notice 36-22-170 on December 1, 2014. This rule became effective on December 2, 2014, and this copy will remain on the [DNRC website](#) until the official [Secretary of State's administrative rules website](#) is updated.

DISCLAIMER: *If there is any discrepancy between the administrative rules contained within this document and the official Administrative Rules of Montana as maintained by the Secretary of State's Office, the official, legal version is that which is maintained by the Secretary of State's Office.*

36.12.215 DISCOVERY (1) Written discovery may commence upon service of the hearing notice and appointment of hearing examiner. Unless otherwise specified in this rule or order of the hearing examiner, the methods, scope, and procedures of discovery available pursuant to the Montana Rules of Civil Procedure apply to written discovery in a contested case.

(2) A party may make a written demand upon another party requesting the disclosure of witnesses and written documents following the commencement of discovery. Within ten days of a service of a written demand, the responding party must:

(a) disclose the names and addresses of all witnesses known to the responding party to have knowledge of relevant facts along with a brief summary of the facts known by each witness, whether the responding party intends to call the witness as a witness at hearing, and the anticipated testimony of any witness the responding party intends to call as a witness at hearing. All witnesses unknown at the time of said disclosure shall be disclosed, together with a brief summary of the expected testimony, as soon as they become known;

(b) identify all relevant documents, maps, photographs, correspondence, recorded statements, or other written materials;

(c) provide the name and address of the custodian of such information; and

(d) disclose whether the responding party intends to use the evidence at hearing.

(3) Unless otherwise provided for by order of the hearing examiner, within ten days of being served with written requests for production of documents, written interrogatories, and/or written requests for admission, the responding party shall serve written responses and/or objections upon the requesting party.

(4) Any party unreasonably failing upon demand to make the disclosure by this rule, may be foreclosed from presenting any evidence at the hearing through witnesses not disclosed or through witnesses whose statements are not disclosed. (History: 2-4-201, 85-2-113, MCA; IMP, 2-4-602, MCA; NEW, 1984 MAR p. 697, Eff. 4/27/84; AMD, 1994 MAR p. 307, Eff. 2/11/94; AMD, 2014 MAR p. 2956, Eff. 12/12/14.)

36.12.216 DEPOSITIONS BY ORAL EXAMINATION (1) Depositions of parties and witnesses by oral examination may be taken in accordance with Rule 30, Montana Rules of Civil Procedure, governing depositions by oral examination.

(2) Depositions of parties and witnesses by oral examination may be used at hearing for any purpose permitted by Rule 32, Montana Rules of Civil Procedure, for the use of depositions in court proceedings. (History: 2-4-201, 85-2-113, MCA; IMP, 2-4-602, 2-4-611, MCA; NEW, 1984 MAR p. 697, Eff. 4/27/84; AMD, 1994 MAR p. 307, Eff. 2/11/94; AMD, 2014 MAR p. 2956, Eff. 12/12/14.)

This is an unofficial copy of the latest version of ARM 36.12.101, 36.12.201, 36.12.203, 36.12.204, 36.12.206, 36.12.207, 36.12.209, 36.12.210, 36.12.212 through 36.12.216, 36.12.220, 36.12.223, 36.12.225 through 36.12.228, 36.12.234; the adoption of New Rule I; and the repeal of ARM 36.12.202, 36.12.205, 36.12.211, 36.12.219, and 36.12.229 regarding definitions and the procedural rules for hearings, as adopted in MAR Notice 36-22-170 on December 1, 2014. This rule became effective on December 2, 2014, and this copy will remain on the [DNRC website](#) until the official [Secretary of State's administrative rules website](#) is updated.

DISCLAIMER: *If there is any discrepancy between the administrative rules contained within this document and the official Administrative Rules of Montana as maintained by the Secretary of State's Office, the official, legal version is that which is maintained by the Secretary of State's Office.*

36.12.217 SUBPOENAS (1) Requests for subpoenas for the attendance of witnesses or the production of documents shall be made in writing to the hearing examiner and shall contain a brief statement demonstrating the potential relevance of the testimony or evidence sought and shall identify any documents sought with specificity, and shall name all persons to be subpoenaed.

(a) A subpoena shall be served in the manner provided by the Montana Rules of Civil Procedure.

(b) The cost of service, fees, and expenses of any witnesses subpoenaed shall be paid at the rates prescribed by Montana law by the party at whose request the witness appears.

(c) The person serving the subpoena shall make proof of service by filing the subpoena together with a certificate of service with the hearing examiner.

(2) Upon motion made promptly, and in any event at or before the time specified in the subpoena for compliance therewith, the subpoena may be quashed or modified if the hearing examiner finds it is unreasonable or oppressive.

(3) The party seeking the subpoena may seek enforcement of the same by applying to a judge of any district court of the state of Montana for an order to show cause why the subpoena should not be enforced against any witness who fails to obey the subpoena. (History: 2-4-201, 85-2-113, MCA; IMP, 2-4-104, 2-4-611, MCA; NEW, 1984 MAR p. 697, Eff. 4/27/84; AMD, 1994 MAR p. 307, Eff. 2/11/94.)

36.12.218 RIGHTS OF PARTIES (1) All parties shall have the right to present evidence, rebuttal testimony and argument with respect to the issues and to cross-examine witnesses. 2-4-612(1), MCA. (History: 2-4-201, 85-2-113, MCA; IMP, 2-4-612, MCA; NEW, 1984 MAR p. 697, Eff. 4/27/84.)

36.12.219 UNTIMELY OBJECTORS (REPEALED) (History: 2-4-201, 85-2-113, MCA; IMP, 2-4-611, 2-4-612, MCA; NEW, 1984 MAR p. 697, Eff. 4/27/84; AMD, 1994 MAR p. 307, Eff. 2/11/94; REP, 2014 MAR p. 2956, Eff. 12/12/14.)

36.12.220 WITNESSES AND PRE-FILED TESTIMONY (1) Any party may be a witness and may present witnesses at the hearing.

(2) The hearing examiner may order anticipated direct examination testimony by experts or other witnesses be prepared in advance and submitted as pre-filed testimony in either question-and-answer or narrative format.

(3) Pre-filed testimony shall be served upon the hearing examiner and all parties as established by a schedule set by the hearing examiner. Any witness who submits pre-filed testimony must be available for cross-examination at the hearing.

(4) Evidentiary objections to such pre-filed testimony may be made by any party at any time during the hearings conducted pursuant to these rules.

This is an unofficial copy of the latest version of ARM 36.12.101, 36.12.201, 36.12.203, 36.12.204, 36.12.206, 36.12.207, 36.12.209, 36.12.210, 36.12.212 through 36.12.216, 36.12.220, 36.12.223, 36.12.225 through 36.12.228, 36.12.234; the adoption of New Rule I; and the repeal of ARM 36.12.202, 36.12.205, 36.12.211, 36.12.219, and 36.12.229 regarding definitions and the procedural rules for hearings, as adopted in MAR Notice 36-22-170 on December 1, 2014. This rule became effective on December 2, 2014, and this copy will remain on the [DNRC website](#) until the official [Secretary of State's administrative rules website](#) is updated.

DISCLAIMER: *If there is any discrepancy between the administrative rules contained within this document and the official Administrative Rules of Montana as maintained by the Secretary of State's Office, the official, legal version is that which is maintained by the Secretary of State's Office.*

(5) At the hearing, the party presenting the testimony may, if they deem it appropriate, briefly summarize the pre-filed testimony prior to the start of cross-examination. Nothing contained within the pre-filed testimony shall be deemed to foreclose any party from presenting rebuttal testimony or from presenting testimony in response to reasonably unforeseen areas without the necessity of pre-filing.

(6) At the request of a party or a witness, the hearing examiner may permit a witness to appear and provide oral testimony by means of telephonic or video participation. Such requests may only be granted if the hearing examiner determines that telephonic or video participation will not substantially prejudice the rights of any party.

(7) All oral testimony and pre-filed testimony shall be under oath or affirmation. (History: 2-4-201, 85-2-113, MCA; IMP, 2-4-611, 2-4-612, MCA; NEW, 1984 MAR p. 697, Eff. 4/27/84; AMD, 1994 MAR p. 307, Eff. 2/11/94; AMD, 2014 MAR p. 2956, Eff. 12/12/14.)

36.12.221 RULES OF EVIDENCE (1) The common law and statutory rules of evidence shall apply only upon stipulation of all parties to the hearing. Otherwise, the hearing examiner may admit all evidence that possesses probative value, including hearsay if it is the type of evidence commonly relied upon by reasonably prudent persons in the conduct of their affairs. The hearing examiner shall give effect to the rules of privilege recognized by law. Evidence which is irrelevant, immaterial, or unduly repetitious may be excluded.

(2) The department file shall be deemed part of the record in its entirety unless objections are made to a specific portion thereof upon review by the parties. If the objection is sustained, that portion of the file will not be made a part of the record. All other evidence to be considered in the case, including all records and documents in the possession of a party (or a true and accurate photocopy thereof), shall be offered and made a part of the record in the case. No other factual information or evidence shall be considered in the determination of the case.

(3) Documentary evidence in the form of copies or excerpts may be received or incorporated by reference. Upon request, parties shall be given an opportunity to compare copies with the originals.

(4) The hearing examiner may take notice of judicially cognizable facts and generally recognized technical or scientific facts within the department's specialized knowledge. Parties shall be notified, either before or during the hearing or by reference in the proposal for decision of the material noticed. Each party shall be afforded an opportunity to contest the materials so noticed.

This is an unofficial copy of the latest version of ARM 36.12.101, 36.12.201, 36.12.203, 36.12.204, 36.12.206, 36.12.207, 36.12.209, 36.12.210, 36.12.212 through 36.12.216, 36.12.220, 36.12.223, 36.12.225 through 36.12.228, 36.12.234; the adoption of New Rule I; and the repeal of ARM 36.12.202, 36.12.205, 36.12.211, 36.12.219, and 36.12.229 regarding definitions and the procedural rules for hearings, as adopted in MAR Notice 36-22-170 on December 1, 2014. This rule became effective on December 2, 2014, and this copy will remain on the [DNRC website](#) until the official [Secretary of State's administrative rules website](#) is updated.

DISCLAIMER: *If there is any discrepancy between the administrative rules contained within this document and the official Administrative Rules of Montana as maintained by the Secretary of State's Office, the official, legal version is that which is maintained by the Secretary of State's Office.*

(5) A party may call an adverse witness who may be a party's managing agent or employees, or an officer, director, managing agent, or employee of the state or any political subdivision thereof, or of a public or private corporation or of a partnership or association or body politic which is an adverse party, and interrogate the adverse witness by leading questions and contradict and impeach the adverse witness on material matters in all respects as if the adverse witness had been called by the adverse party. The adverse witness may be examined by counsel for the adverse witness upon the subject matter of the examination in chief under the rules applicable to direct examination, and may be cross-examined, contradicted, and impeached by any other party adversely affected by the adverse witness' testimony. (History: 2-4-201, 85-2-113, MCA; IMP, 2-4-612, 85-2-121, MCA; NEW, 1984 MAR p. 697, Eff. 4/27/84; AMD, 1994 MAR p. 307, Eff. 2/11/94.)

36.12.222 CONTINUANCES (1) A motion for continuance of a hearing shall be made pursuant to the requirements of ARM 36.12.213.

(2) A motion for continuance filed not less than ten days prior to the hearing may be granted upon showing of good cause.

(3) A motion for continuance filed less than ten days prior to the hearing shall be denied unless good cause exists and the reason for the request could not have been ascertained earlier and cannot be avoided.

(4) "Good cause" for purposes of this rule includes but is not limited to:

(a) death or incapacitating illness of a party or member of a party's immediate family or attorney of a party or witness to an essential fact;

(b) a court order requiring a continuance;

(c) lack of proper notice of the hearing;

(d) a substitution of the attorney of a party if the substitution is shown to be required;

(e) unavailability of counsel due to engagement in court or another administrative proceeding provided counsel submits copies of documents requiring counsel's presence at said proceeding;

(f) a change in the parties or pleading requiring postponement;

(g) unavailability of a party or a witness to an essential fact for serious and compelling reasons where the conflict could not be anticipated and cannot be avoided;

or

(h) agreement for a continuance by all parties upon a showing that:

(i) more time is clearly necessary to complete discovery authorized pursuant to ARM 36.12.215(3) or other mandatory preparation for the case, and the parties have agreed to a new hearing date; or

(ii) the parties have agreed to a settlement of the case; or

(iii) all the parties have agreed to a new hearing date and the agreed upon date is convenient for the hearing examiner.

This is an unofficial copy of the latest version of ARM 36.12.101, 36.12.201, 36.12.203, 36.12.204, 36.12.206, 36.12.207, 36.12.209, 36.12.210, 36.12.212 through 36.12.216, 36.12.220, 36.12.223, 36.12.225 through 36.12.228, 36.12.234; the adoption of New Rule I; and the repeal of ARM 36.12.202, 36.12.205, 36.12.211, 36.12.219, and 36.12.229 regarding definitions and the procedural rules for hearings, as adopted in MAR Notice 36-22-170 on December 1, 2014. This rule became effective on December 2, 2014, and this copy will remain on the [DNRC website](#) until the official [Secretary of State's administrative rules website](#) is updated.

DISCLAIMER: *If there is any discrepancy between the administrative rules contained within this document and the official Administrative Rules of Montana as maintained by the Secretary of State's Office, the official, legal version is that which is maintained by the Secretary of State's Office.*

- (5) "Good cause" for purposes of this rule shall not include:
- (a) intentional delay;
 - (b) unavailability of an expert witness if the witness' deposition could have been taken prior to the hearing;
 - (c) failure of a party or their counsel to properly utilize the notice period to prepare for the hearing;
 - (d) failure of a party to act with due diligence in acquiring counsel within the notice period.
- (6) During a hearing, if it appears in the interest of justice that further testimony should be received, the hearing examiner may continue the hearing to a future date and oral notice of such continuance on the record shall be sufficient. (History: 2-4-201, 85-2-113, MCA; IMP, 2-4-611, MCA; NEW, 1984 MAR p. 697, Eff. 4/27/84; AMD, 1994 MAR p. 307, Eff. 2/11/94.)

36.12.223 HEARING PROCEDURE (1) Unless the hearing examiner determines otherwise a contested case hearing shall be conducted substantially in the following manner:

- (a) The hearing examiner shall open the hearing and provide a statement that explains or identifies:
 - (i) the subject matter of the hearing and issues presented;
 - (ii) the procedures to be followed at hearing including the sequence for presenting evidence and argument;
 - (iii) any exhibits or evidence entered into the record by stipulation of the parties;
 - (iv) the burden of proof for each party;
 - (v) the hearing is the time and place for each party to present argument, evidence, and cross-examine witnesses;
 - (vi) the common law and statutory rules of evidence do not apply;
 - (vii) the hearing examiner's discretion to make determinations regarding admissibility of evidence; and
 - (viii) such other matters as the hearing examiner considers appropriate.
- (2) Each party shall be provided the opportunity to make an opening statement.
- (3) Each party shall be provided the opportunity to present evidence and examine witnesses in a sequence determined by the hearing examiner.
- (4) Each party shall be provided the opportunity to cross-examine witnesses in a sequence determined by the hearing examiner.
- (5) Each party shall be given the opportunity to present final argument in a sequence and form determined by the hearing examiner. Such final argument may be in the form of written memoranda or oral argument, or both.

This is an unofficial copy of the latest version of ARM 36.12.101, 36.12.201, 36.12.203, 36.12.204, 36.12.206, 36.12.207, 36.12.209, 36.12.210, 36.12.212 through 36.12.216, 36.12.220, 36.12.223, 36.12.225 through 36.12.228, 36.12.234; the adoption of New Rule I; and the repeal of ARM 36.12.202, 36.12.205, 36.12.211, 36.12.219, and 36.12.229 regarding definitions and the procedural rules for hearings, as adopted in MAR Notice 36-22-170 on December 1, 2014. This rule became effective on December 2, 2014, and this copy will remain on the [DNRC website](#) until the official [Secretary of State's administrative rules website](#) is updated.

DISCLAIMER: *If there is any discrepancy between the administrative rules contained within this document and the official Administrative Rules of Montana as maintained by the Secretary of State's Office, the official, legal version is that which is maintained by the Secretary of State's Office.*

(6) After final argument, the hearing shall be closed or continued. If the hearing is continued, the hearing examiner shall make an oral statement providing:

- (a) the contested case hearing will be continued to a certain time and day; or
- (b) the contested case hearing will be continued to a date to be determined later by written order.

(7) The hearing examiner may require submission of proposed findings of fact and/or post-hearing briefs at the close of testimony in the hearing. The proposed findings and briefs may be submitted simultaneously or sequentially and within such time periods as the hearing examiner may prescribe.

(8) The record of the contested case proceeding shall be closed upon receipt of the final written memorandum, transcript, if any, or late filed exhibits that the parties and the hearing examiner have agreed should be received into the record, whichever occurs latest. (History: 2-4-201, 85-2-113, MCA; IMP, 2-4-611, 2-4-612, MCA; NEW, 1984 MAR p. 697, Eff. 4/27/84; AMD, 1994 MAR p. 307, Eff. 2/11/94; AMD, 2014 MAR p. 2956, Eff. 12/12/14.)

36.12.224 DISRUPTION OF HEARING (1) It is the duty of the hearing examiner to conduct a fair and impartial hearing and to maintain order. All parties to the hearing, their counsel and any other persons present shall conduct themselves in a respectful manner. Any disregard by parties or their attorneys of the rulings of the hearing examiner on matters of order and procedure may be noted on the record. If the applicant is responsible for disrespectful, disruptive, or disorderly conduct which interferes with the proper and orderly holding of the hearing, the hearing examiner may recess or continue the hearing. If a party or person other than the applicant is disrespectful, disorderly or disruptive, the hearing examiner may bar that party or person from the proceeding and may strike all evidence presented by that party or person if the applicant's case is not prejudiced by the absence of the offending party or person. Before taking action under this rule, the hearing examiner shall first read this rule to those parties or attorneys causing such interference or disruption. (History: 2-4-201, 85-2-113, MCA; IMP, 2-4-611, MCA; NEW, 1984 MAR p. 697, Eff. 4/27/84; AMD, 1994 MAR p. 307, Eff. 2/11/94.)

36.12.225 SITE VISIT (1) Upon the hearing examiner's motion or upon the motion of any party, a site visit to the lands involved in the proceeding may be made at any time during the proceeding.

(2) The hearing examiner may enter upon lands to view proposed works, sources of water, location of proposed uses, construction of works, and such other views that are deemed relevant by the hearing examiner to gain a proper understanding of the issues involved in the proceeding.

This is an unofficial copy of the latest version of ARM 36.12.101, 36.12.201, 36.12.203, 36.12.204, 36.12.206, 36.12.207, 36.12.209, 36.12.210, 36.12.212 through 36.12.216, 36.12.220, 36.12.223, 36.12.225 through 36.12.228, 36.12.234; the adoption of New Rule I; and the repeal of ARM 36.12.202, 36.12.205, 36.12.211, 36.12.219, and 36.12.229 regarding definitions and the procedural rules for hearings, as adopted in MAR Notice 36-22-170 on December 1, 2014. This rule became effective on December 2, 2014, and this copy will remain on the [DNRC website](#) until the official [Secretary of State's administrative rules website](#) is updated.

DISCLAIMER: *If there is any discrepancy between the administrative rules contained within this document and the official Administrative Rules of Montana as maintained by the Secretary of State's Office, the official, legal version is that which is maintained by the Secretary of State's Office.*

(3) Before making any site visit, the hearing examiner shall give the parties at least five days written notice to participate, unless the motion is made during a hearing and then oral notice on the record shall be sufficient. (History: 2-4-201, 85-2-113, MCA; IMP, 85-2-115, MCA; NEW, 1984 MAR p. 697, Eff. 4/27/84; AMD, 1994 MAR p. 307, Eff. 2/11/94; AMD, 2014 MAR p. 2956, Eff. 12/12/14.)

36.12.226 THE RECORD (1) The hearing examiner shall maintain the official record in each contested case proceeding until the issuance of the final order. The record in a contested case shall contain:

- (a) a complete copy of the application file;
- (b) all pleadings, motions, intermediate rulings, and orders;
- (c) all evidence received or considered, including a verbatim record of oral proceedings and pre-filed testimony;
- (d) a statement of matters officially noticed;
- (e) questions and offers of proof, objections, and rulings;
- (f) the department file and all staff memoranda or data submitted to the hearing examiner as evidence in connection with the case; and
- (g) the decision or final order by the hearing examiner. (History: 2-4-201, 85-2-113, MCA; IMP, 2-4-614, MCA; NEW, 1984 MAR p. 697, Eff. 4/27/84; AMD, 1994 MAR p. 307, Eff. 2/11/94; AMD, 2014 MAR p. 2956, Eff. 12/12/14.)

36.12.227 VERBATIM RECORD (1) The verbatim record consisting of audio recordings of the contested case hearing shall be transcribed if requested by the hearing examiner.

(2) If a petition for judicial review is filed and a party to the proceeding elects to have a written transcription prepared as part of the record of the administrative hearing for certification to the reviewing district court, the requesting party must make arrangements with the department for ordering and payment of preparation cost of a written transcript.

(3) If the hearing examiner does not request a transcript, the department will transmit a copy of the recording(s) of the proceedings to the district court.

(4) Any party may request copies of the recordings and shall pay the charge set by the department. All monies received for copies of the recordings shall be payable to the department and shall be deposited in the department's water right appropriation account in the state treasury. (History: 2-4-201, 85-2-113, MCA; IMP, 2-4-614, MCA; NEW, 1984 MAR p. 697, Eff. 4/27/84; AMD, 1994 MAR p. 307, Eff. 2/11/94; AMD, 2014 MAR p. 2956, Eff. 12/12/14.)

This is an unofficial copy of the latest version of ARM 36.12.101, 36.12.201, 36.12.203, 36.12.204, 36.12.206, 36.12.207, 36.12.209, 36.12.210, 36.12.212 through 36.12.216, 36.12.220, 36.12.223, 36.12.225 through 36.12.228, 36.12.234; the adoption of New Rule I; and the repeal of ARM 36.12.202, 36.12.205, 36.12.211, 36.12.219, and 36.12.229 regarding definitions and the procedural rules for hearings, as adopted in MAR Notice 36-22-170 on December 1, 2014. This rule became effective on December 2, 2014, and this copy will remain on the [DNRC website](#) until the official [Secretary of State's administrative rules website](#) is updated.

DISCLAIMER: *If there is any discrepancy between the administrative rules contained within this document and the official Administrative Rules of Montana as maintained by the Secretary of State's Office, the official, legal version is that which is maintained by the Secretary of State's Office.*

36.12.228 THE DECISION OR FINAL ORDER (1) Following the close of the record, the hearing examiner shall make a decision or final order pursuant to 2-4-623, MCA.

(2) Upon completion, a copy of the decision shall be served upon all parties by:
(a) personal service;
(b) first class mail; or
(c) depositing it with the mail and distribution section, General Services Division, Department of Administration. (History: 2-4-201, 85-2-113, MCA; IMP, 2-4-612, 2-4-623, MCA; NEW, 1984 MAR p. 697, Eff. 4/27/84; AMD, 1994 MAR p. 307, Eff. 2/11/94; AMD, 2014 MAR p. 2956, Eff. 12/12/14.)

36.12.229 EXCEPTIONS TO THE HEARING EXAMINER'S PROPOSAL FOR DECISION AND THE FINAL DECISION-MAKING PROCESS (REPEALED) (History: 2-4-201, 85-2-113, MCA; IMP, 2-4-621, 2-4-622, 2-4-623, MCA; NEW, 1984 MAR p. 697, Eff. 4/27/84; AMD, 1994 MAR p. 307, Eff. 2/11/94; REP, 2014 MAR p. 2956, Eff. 12/12/14.)

36.12.230 EX PARTE COMMUNICATIONS (1) Except as provided in (2) no party or representative of a party shall communicate, in connection with any issue of law or fact in a pending contested case, with any person serving as a hearing examiner or as a final decision-maker without notice and opportunity for all parties to participate in the communication. The prohibitions of this subsection shall apply beginning at the time at which a contested case is noticed for hearing and shall continue until a final order has been issued unless the person responsible for the communication has knowledge that it will be noticed, in which case the prohibitions shall apply beginning at the time of that person's acquisition of such knowledge.

(2) A hearing examiner or a final decision-maker may respond to questions of any party or representative of a party if it relates solely to procedures to be followed during the pendency of the contested case. A communication made for this purpose is not an ex parte communication.

This is an unofficial copy of the latest version of ARM 36.12.101, 36.12.201, 36.12.203, 36.12.204, 36.12.206, 36.12.207, 36.12.209, 36.12.210, 36.12.212 through 36.12.216, 36.12.220, 36.12.223, 36.12.225 through 36.12.228, 36.12.234; the adoption of New Rule I; and the repeal of ARM 36.12.202, 36.12.205, 36.12.211, 36.12.219, and 36.12.229 regarding definitions and the procedural rules for hearings, as adopted in MAR Notice 36-22-170 on December 1, 2014. This rule became effective on December 2, 2014, and this copy will remain on the [DNRC website](#) until the official [Secretary of State's administrative rules website](#) is updated.

DISCLAIMER: *If there is any discrepancy between the administrative rules contained within this document and the official Administrative Rules of Montana as maintained by the Secretary of State's Office, the official, legal version is that which is maintained by the Secretary of State's Office.*

(3) A hearing examiner or final decision-maker who receives a communication prohibited by (1) shall decline to listen to such communication and shall explain that the matter is pending for determination, and that the hearing examiner may not listen to information or allegation when other parties are not present to respond. If unsuccessful in preventing such communication, the recipient shall advise the communicator that the hearing examiner will not consider the communication and that the other parties will be notified of it. The recipient shall then place on the record of the pending matter any written communications received (other than those allowed pursuant to (2) or a memorandum stating the substance of all oral communications received and all responses made and the identity of each person from whom the recipient received an ex parte communication. The recipient shall then notify all parties of the communication and its substance either orally on the record at the contested case hearing or, if no hearing is held, in a written memorandum. The recipient shall inform the parties that the substance of the communication is not part of the record in the pending matter, and will not be used as a basis for any part of the decision made therein.

(4) Upon receipt of a communication knowingly made in violation of (1), a hearing examiner or final decision-maker may require, to the extent consistent with the interests of justice and the policy of underlying statutes, the communicator to show cause why the communicator's claim, objection or interest in the contested case should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation. (History: 2-4-201, 85-2-113, MCA; IMP, 2-4-613, MCA; NEW, 1984 MAR p. 697, Eff. 4/27/84; AMD, 1994 MAR p. 307, Eff. 2/11/94.)

36.12.231 REHEARING (1) A rehearing proceeding is expressly prohibited under these rules, except as otherwise required under 2-4-621, 2-4-622, 2-4-703, MCA. (History: 2-4-201, 85-2-113, MCA; IMP, 2-4-621, 2-4-622, 2-4-703, MCA; NEW, 1984 MAR p. 697, Eff. 4/27/84.)

36.12.232 EMERGENCY PROCEDURES (1) Nothing contained in these rules is intended to preempt, repeal or be in conflict with any rule or statute which provides for acts by the department in an emergency or procedure for conduct by the department in such a situation. (History: 2-4-201, 85-2-113, MCA; IMP, 2-4-201, 85-2-113, MCA; NEW, 1984 MAR p. 697, Eff. 4/27/84.)

36.12.233 SEVERABILITY (1) If any provision of these rules is held invalid, such invalidity shall not affect any other provisions of the rules which can be given effect without the invalid provision, and to this end the provisions of these rules are declared to be severable. (History: 2-4-201, 85-2-113, MCA; IMP, 2-4-201, 85-2-113, MCA; NEW, 1984 MAR p. 697, Eff. 4/27/84.)

This is an unofficial copy of the latest version of ARM 36.12.101, 36.12.201, 36.12.203, 36.12.204, 36.12.206, 36.12.207, 36.12.209, 36.12.210, 36.12.212 through 36.12.216, 36.12.220, 36.12.223, 36.12.225 through 36.12.228, 36.12.234; the adoption of New Rule I; and the repeal of ARM 36.12.202, 36.12.205, 36.12.211, 36.12.219, and 36.12.229 regarding definitions and the procedural rules for hearings, as adopted in MAR Notice 36-22-170 on December 1, 2014. This rule became effective on December 2, 2014, and this copy will remain on the [DNRC website](#) until the official [Secretary of State's administrative rules website](#) is updated.

DISCLAIMER: *If there is any discrepancy between the administrative rules contained within this document and the official Administrative Rules of Montana as maintained by the Secretary of State's Office, the official, legal version is that which is maintained by the Secretary of State's Office.*

36.12.234 REOPENING RECORD (1) Upon motion of a party to the proceeding filed prior to issuance of a decision or final order, the record may be reopened for receipt of evidence if it is shown to the satisfaction of the hearing examiner that:

- (a) the additional evidence is material; and
 - (b) there were good reasons for the failure to present it in the hearing.
- (2) Prior to issuance of a decision or final order and upon providing the parties with notice and the opportunity to object, the hearing examiner may reopen the record to request additional evidence or clarification that the hearing examiner deems necessary to issue a decision or final order. (History: 2-4-201, 85-2-113, MCA; IMP, 2-4-611, 2-4-614, MCA; NEW, 1994 MAR p. 307, Eff. 2/11/94; AMD, 2014 MAR p. 2956, Eff. 12/12/14.)

36.12.235 APPOINTMENT OF STAFF EXPERT (1) A department staff expert may be appointed to issue a written report/opinion regarding:

- (a) the subject matter and issues presented by technical aspects of the application;
 - (b) valid objections; and/or
 - (c) evidence in the contested case proceeding.
- (2) A copy of any department staff expert report/opinion shall be served on each party at least 14 days before commencement of the contested case hearing.
- (3) A party may take the deposition pursuant to ARM 36.12.216 of any department staff expert witness who prepares a report/opinion.
- (4) A department staff expert witness who prepares a report/opinion may be called as a witness at the contested case hearing and examined or cross-examined by any party and/or the hearing examiner.
- (5) Nothing in this rule shall prevent any of the parties from producing other expert evidence on the same fact or matter to which the staff expert witness appointed by the hearing examiner relates. (History: 2-4-201, 85-2-113, MCA; IMP, 2-4-611, 2-4-612, MCA; NEW, 2014 MAR p. 2956, Eff. 12/12/14.)

Subchapters 3 and 4 reserved