

BEFORE THE DEPARTMENT
OF NATURAL RESOURCES AND CONSERVATION
STATE OF MONTANA

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KATRIN R. CHANDLER, BETTY J.) NOTICE OF APPOINTMENT OF HEARING
LANNEN, POLLY REX, JOSEPH MILLER,) EXAMINER, ORDER SCHEDULING
and THE CLARK FORK COALITION,) BRIEFING FROM ALL INTERESTED
Petitioners) PARTIES, AND SETTING PUBLIC HEARING
) ON PETITION FOR DECLARATORY RULING

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The Department of Natural Resources and Conservation (Department) hereby appoints a HEARING EXAMINER and enters the following ORDER, BRIEFING SCHEDULE and PUBLIC HEARING DATE for all parties interested in participating in the Petition for Declaratory Ruling, granted on January 28, 2010, and posted on the Department' website at <http://www.dnrc.mt.gov/wrd/>. The Department has determined that this issue is of statewide importance and will have statewide implications. Accordingly, the Department is seeking argument or comment from all interested persons across the State. Notice of this proceeding is being posted on the Department website, published in newspapers of general circulation, including Helena, Bozeman, Billings, Great Falls and Missoula, and is provided to all persons on the Water Resources Division's rule-making list and interested parties list.

Briefing or any Statement of Position (written comments) is limited to the following issue raised by Petitioners:

Whether the 'combined appropriation' administrative rule definition (Rule 36.12.101(13) ARM) is consistent with applicable law under the Montana Water Use Act, Section 85-2-101 et.seq, MCA.

The decision on whether to move forward with Petitioners' request to adopt a new definition for ARM 36.12.101 (13) has been deferred under the January 28, 2010, ORDER until such time as the ruling on the above issue is decided.

APPOINTMENT OF HEARING EXAMINER

The Department hereby appoints, Joe Lamson, DNRC Deputy Director, as Hearing Examiner. Mr. Lamson is delegated all powers necessary for an orderly and complete proceeding, and to make the final determination on the issue. This Petition for a Declaratory Ruling was granted pursuant to Section 2-4-501 et seq, MCA. The Department has adopted

the Model Rules of the Montana Attorney General for Declaratory Rulings and will proceed pursuant to those rules. ARM 1.3.226 to 1.3.233.

BRIEFING SCHEDULE

The Department establishes the following briefing schedule for all interested persons:

1. **OPENING BRIEFS** from Petitioners and any other INTERESTED PERSONS and any **STATEMENT of POSITION** from other interested persons shall be filed concurrently and must be **received** at the DNRC Water Resources Division Hearings Unit in Helena by **5:00 p.m. April 30, 2010**. Any Brief or Statement of Position submitted after the deadline will not be part of the record or considered in the ruling.
2. **RESPONSES** to any BRIEF or STATEMENT OF POSITION shall be filed concurrently and must be **received** at the DNRC Water Resources Division Hearings Unit in Helena by **5:00 p.m. June 4, 2010**. Any response to briefs or statements of position submitted after the deadline will not be part of the record or considered in the ruling.
3. Briefs, Statements of Position, and Responses shall be signed and contact information, including the address of the party who submitted the document, shall be attached on a separate sheet of paper to the submission. Anonymous submissions will not be accepted.
4. Briefs, Statements of Position, and Responses may be filed electronically by submission to dncrwater@mt.gov.
5. All briefs and statements of position filed with the Department shall be posted on the DNRC Water Resources Division website, and service on all parties is accomplished by this posting.

PUBLIC HEARING

PUBLIC HEARING on the issue is scheduled for **June 17, 2010**, at **9:00 am** at the Room 303 of the State Capitol Building (Old Supreme Court Chamber) 1301 E 6th Avenue, Helena, MT. All parties will have an opportunity to present a short argument or statement of position.

- a. The PUBLIC HEARING will be limited to the legal issue identified above.

- b. No evidentiary hearing is contemplated under this ORDER.
- c. The public hearing will be recorded.
- d. All persons who filed briefs, statements of position, or responses thereto in this matter will have a maximum of 10 minutes for argument on the issue at the public hearing.
- e. Comments from other members of the public on the issue at the public hearing will be limited to 5 minutes per person.

AVAILABILITY OF DOCUMENTS

The PETITION and all APPENDICES thereto are available for the Parties and interested public on the Department's website at <http://www.dnrc.mt.gov/wrd/default.asp> and at the DNRC Water Resources Division, 1424 9th Avenue, Helena MT.

DECLARATORY RULING ON PETITION

Upon full consideration of all written submissions and oral statements, the Hearings Examiner shall enter a Final Order on the legal issue identified above.

All correspondence and filings with the Department should be made to the following address:

Department of Natural Resources and Conservation
Water Resources Division
Hearings Unit
1424 Ninth Avenue
P.O. Box 201601
Helena MT 59620-1601

Interested persons are cautioned that the above dates for submission of written materials are receipt dates not postmark dates. Written materials will not be accepted after the deadlines identified above. No written materials will be accepted at the hearing.

The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the agency no later than 5:00 p.m. June 8, 2009, to advise the agency of the nature of the accommodation needed. Please contact Kim Overcast, Department of Natural Resources and Conservation, 1424 Ninth Avenue,

Helena, MT 59620, telephone (406) 444-6614; fax (406) 444-0533; e-mail
kovercast@mt.gov.

IT IS SO ORDERED.

Dated this 9th day of March, 2010.

/Original signed by Thomas Schultz/
THOMAS SCHULTZ, Acting Administrator
Water Resources Division
Department of Natural Resources
and Conservation
P.O. Box 201601
Helena, Montana 59620-1601
(406) 444-6605

CERTIFICATE OF SERVICE

This certifies that a true and correct copy of the **NOTICE OF APPOINTMENT OF HEARING EXAMINER AND ORDER SCHEDULING BRIEFING FROM ALL INTERESTED PARTIES ON PETITION FOR DECLARATORY RULING** was served by first class mail upon all parties listed below on this 11th day of March, 2010.

Matthew K. Bishop
Western Environmental Law Center
103 Reeder's Alley
Helena, MT 59601
bishop@westernlaw.org

/Original Signed by Kim Overcast/

Kim Overcast, Water Rights Bureau
406-444-6614