

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

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KATRIN R. CHANDLER, BETTY J.)	
LANNEN, POLLY REX, JOSEPH MILLER,)	ORDER DENYING REQUEST TO AMEND
and THE CLARK FORK COALITION,)	RULE 36.12.101 (13)
Petitioners.)	

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A Petition for Declaratory Ruling and Request to Amend Rule 36.12.101(13) by Katrin R. Chandler, Betty J. Lannen, Polly Rex, Joseph Miller, and the Clark Fork Coalition, was submitted to the Department on November 30, 2009. The Petition requested, under Sections 2-4-501 and 2-4-308, MCA, and Rules 1.3.227 and 1.3.308, ARM, that the current administrative rule definition of “combined appropriation” set forth in Rule 36.12.101(13), ARM be declared invalid and that the Department initiate rulemaking to amend the definition.

Procedural History

The Department issued an Order on January 28, 2010 that bifurcated the issues raised in the Petition. In that Order, the Department granted the Petition for Declaratory Ruling and deferred consideration of the request for amending the rule until after the Petition for Declaratory Ruling was considered. The Declaratory Ruling has now issued.

Declaratory Ruling Issued

On August 17, 2010, the Hearing Examiner ruled in the Declaratory Ruling that:
the “combined appropriation” administrative rule definition (Rule 36.12.101(13), ARM) is consistent and not in conflict with applicable law under the Water Use Act, Section 85-2-101 et. seq, MCA, for reasons discussed in its Declaratory Ruling.

The Hearing Examiner further ruled that:

while the current “combined appropriation” administrative rule definition (Rule 36.12.101(13), ARM) is consistent and not in conflict with the Water Use Act, Section 82-2-101 et.seq, MCA, increasing demands on water resources in Montana warrant repeal of Rule 36.12.101(13), ARM. The Department will, within eight months, initiate rulemaking to propose repeal of Rule 36.12.101(13), ARM and adoption of a new “combined appropriation” administrative rule definition pursuant to Section 2-4-302, MCA, for reasons discussed in its Declaratory Ruling.

Decision on Rulemaking

Because the Hearing Examiner has ruled that the Department will initiate rule making to propose repeal of the current rule and initiate rulemaking regarding the “combined appropriation” rule; the Department is Denying the Petitioners Request to Amend the existing rule. The Department will undertake rule making as directed by the Hearing Examiner’s Ruling and will notice the Petitioners and all interested parties at the time it initiates rule making.

THEREFORE; the request of the Petitioners to Amend the Rule is Denied.

IT IS SO ORDERED.

Dated this 30th day of August, 2010.

/Original signed by Thomas Schultz/
THOMAS SCHULTZ, Acting Administrator
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and Conservation
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