

July 2009

# Montana Association of Dam and Canal Systems

# MADCS

Issue 6

## Inside this issue

Message from the President ..... 1

Tentative Topics for 2009 Workshop ..... 2

Water Related Legislation from the 2009 Session..... 2

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## Message from the President

It gives me great pleasure to announce the Dates and Location for the 2009 MADCS Fall Workshop. This year's workshop is scheduled for October 7th and 8th and will be held in Great Falls at the Holliday Inn. The format is the same as last year, with a half-day field trip on the first day and the workshop being held on the second day. For those of you planning to stay at the Holiday Inn, early reservations will receive discounted lodging.

We are planning a very interesting agenda this year covering everything from obtaining state and federal grants to spillway hydraulics (see page 2 for a tentative schedule of topics).

If you have any suggestions for or about the 2009 MADCS Workshop, please feel free to contact us as we are always looking for new ideas.

Thanks for your continued support,

Larry Draper

## MADCS 2009 Workshop - Great Falls, MT

October 7th Field Trip (afternoon)

October 8th Workshop (all day)

Holiday Inn Great Falls  
400 10th Avenue South Great Falls, MT 59405  
(406) 727-7200

Early reservations will receive discounted room rates

More Information to Come!

*Exhibitors and Sustaining Affiliates:  
Reserve your booth space now before they are gone!*



## Tentative Topics for the 2009 Fall Workshop

We have incorporated many of the ideas generated from the 2008 Fall Workshop into this year's format and agenda. New this year will be a concurrent technical session for engineers!

### Currently, we are looking to focus on:

- Recent incidents
- Recent dam & canal rehabilitation
- More on aquatic invaders & weed control
- Pump design
- Understanding spillways
- Water rights basics
- Fun with concrete
- Construction techniques
- New technologies
- Spillway hydraulics

### Special Sessions:

- Confined entry training
- Workshop on funding dam and canal rehabilitation – how to apply for grants
- **AND MUCH MORE!!!**

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**Significant modifications were made to Montana's water laws during the 2009 Legislative Session. Please read further to find out if any of these changes will affect you!**

## 2009 Water Legislation

By Jan Langel

### HB40 Preliminary Determinations for Permits and Changes

This legislation requires the Department to issue its opinion on whether an applicant for permit or change authorization has met their burden in proving the criteria in § 85-2-311 and § 85-2-402, MCA within a 120 days of receipt of a correct and complete application, prior to public notice. The Department will issue its opinion in a Preliminary Determination. If the determination is to grant the application, the application will then proceed to public notice allowing existing water users on the source time to file their objections. A hearing will then be held to gather evidence from all parties as to whether the criteria have been met. The Department will then issue a Final Order to grant, modify or deny the application.

Prior to the issuance of a Preliminary Determination that proposes to deny the application, the applicant is given opportunity to meet with the Department to discuss the information that will be the basis of the Department's determination and any other information they wish to provide to the Department on the criteria. It provides the opportunity for the applicant to discuss the Department's information and requirements. Other water users may request to meet with the Department or attend the meeting with the applicant. This will provide opportunity for the applicant to discuss what the concerns are of other users on the source.

When the Department issues its Preliminary Determination to deny the application, the applicant may request a hearing to show why the permit or change application should not be denied. A hearing will be conducted to take further information or evidence from



*“A number of statutes were amended to provide optional resources for enforcement of violations of the MT Water Law and to establish a water enforcement account.”*

## H2009 Water Legislation *(continued)*

the applicant. After the hearing the Department will issue a Final Order if the decision is to deny. The applicant may appeal the decision to District Court. If after the hearing, the Department determines the application may be granted it will modify its Preliminary Determination to grant. The application will then proceed to public notice to allow time for existing water users to file objections.

### SB120 Controlled Ground Water Area

This legislation provided clarification that the process by which a controlled ground water area (CGWA) is designated under §§ 85-2-506, 507 and 508, MCA is through a MAPA rulemaking process rather than through a contested case type litigation process. These statutes were enacted in 1961 and were rarely utilized till mid-1990's. As the groundwater resource became more contentious, so did the process for designating a CGWA. The new process under MAPA rulemaking will be less costly to petitioners and less traumatic for all parties without extensive litigation. The process allows for full public input.

### SB39 Changes in Points of Diversion

This legislation allows a change in a water right to replace the existing point of diversion without prior Department approval if certain conditions are met. These conditions include, the existing point of diversion is inoperable due to natural causes, there are no other changes to the water right, the capacity of the diversion is not increased, there are no intervening water rights between the old and new point of diversion, the old point of diversion will no longer be used and the existing diversion has been used in the last 10 years. Upon completion of construction of the new diversion the appropriator must file a notice of replacement point of diversion. If the notice is correct and complete the Department shall issue an authorization to change. Then notice of the authorization shall be published in a local paper. Other appropriators may file an objection to the authorized change if they believe they have been adversely affected. The Department will conduct a contested case hearing on the objections to take evidence and testimony. If the Department determines other appropriators will or have been adversely affected, it may revoke the authorization or make it subject to terms and conditions it deems necessary to protect the rights of other appropriators.

## HB39 Water Right Enforcement Program

A number of statutes were amended to provide optional resources for enforcement of violations of the MT Water Law and to establish a water enforcement account. This account is for any penalties collected and is to be used for enforcing any provisions under §85-2-114, MCA. A water master under the Chief Water Judge may be appointed as special master to the district court to assist the court in actions brought before it. In addition the attorney general may bring suit to enjoin any violations of the law or assist the county attorney in doing so. Enforcement under §85-2-114(1) or (3) or 85-5-301 by the Department, county attorney or attorney general shall take priority to protect the water rights of prior appropriators.

### HB41 Aquifer Recharge

Water Quality statutes were clarified that if required, a person proposing to use a mitigation plan to offset stream depletions to have the appropriate water quality permit in hand. A person who proposes to appropriate groundwater may need a mitigation plan to offset depletions to surface water if adverse affect is caused by the groundwater pumping. Further, this bill clarified that mitigation plans or aquifer recharge plans can not include the elimination of vegetation and may not include water that is tributary to the source that is collected from impermeable land surfaces which increases runoff but does not add to the existing tributary water.

***For more information, please contact:***  
*The Montana DNRC Water Resources Division*  
*(406) 444-6601*



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