

**2009 Montana Legislature  
Passage of House Bill 40 (HB40)**

**An Act Revising the Water Permit and Change in Appropriation Right Process  
Effective: July 1, 2009**

## **Preliminary Determinations for Permits and Changes**

The 2009 Legislative Session provided in [HB 40](#) a process to allow the Department of Natural Resources and Conservation to make its opinion known 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 in the beginning of the process prior to publishing the application. The Department must review an application and identify any informational deficiencies in the application within 180 days of receipt of an application. Upon receipt of any additional information the Department will determine whether the application is correct and complete. If the application is correct and complete, the Department can move forward in the process to evaluate the criteria that must be met before the Department can grant an application.

HB40 requires the Department to issue its Preliminary Determination to grant or deny an application within 120 days of determining the application is correct and complete. An applicant will be provided an opportunity to meet with the Department prior to the issuance of its Preliminary Determination in order to review and discuss any concerns with the application and the information that will be the basis of the Department's determination. The Applicant may provide the Department any additional information they wish. Other water users may also request to meet with the Department or attend the meeting with the applicant. This will provide opportunity for the applicant to discuss the concerns of other users on the source.

If the Department's Preliminary Determination is to grant the application, the application will proceed to public notice allowing others with an interest in the source time to file their objections. A hearing will then be held to gather evidence from all parties as to whether the applicable criteria have been met. The Department will then issue a Final Order to grant, condition or deny the application.

If the Department's Preliminary Determination is to deny the application, the applicant may request a hearing to show why the permit or change application should not be denied. A hearing with the applicant will be conducted to take further information or evidence from the applicant. If, after the hearing the Department's decision is to deny application, a Final Order will be issued. 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 and the application will proceed to public notice.

Review the [HB40 Process Flow Chart](#) to see the steps an application will follow through the Department's review under HB40.

**Note** New Water Right Application Forms have been developed. The new forms must be completed for any application that will be received by the Department on or after July 1, 2009. The forms are available at:  
[http://www.dnrc.mt.gov/wrd/water\\_rts/wr\\_general\\_info/wrforms/wr\\_forms.asp](http://www.dnrc.mt.gov/wrd/water_rts/wr_general_info/wrforms/wr_forms.asp)